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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1910, 1941 and 1965

RIN 0560–AH01

Revisions to Direct Farm Loan Programs Appraisal Regulations

AGENCY: Farm Service Agency, USDA

ACTION: Final rule.

SUMMARY: This rule amends the Farm Service Agency's (FSA) regulations governing real estate and chattel appraisals. In loan making, the rule allows FSA to obtain appraisals after loan funds become available and the applicant is determined eligible. Also, the rule increases the dollar threshold that determines when a real estate appraisal is required. In loan servicing, the rule raises the dollar threshold for real estate appraisals in partial release situations and allows the Agency in some cases to release real estate security without appraising the retained real estate. These changes will reduce FSA's appraisal costs and enhance the timeliness of program delivery of certain loan making and servicing actions.

DATES: This rule is effective July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523, telephone: 202–690–4014; e-mail: *mike_cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

This rule amends the regulations that govern the requirement for appraisals for FSA Farm Loan Programs (FLP) direct loans. In response to the proposed rule published August 21, 2003 (68 FR 50479–50481), four comments were received. One comment was from a farm interest group and the other comments were from private citizens. Most aspects of the proposed rule received comments, with some respondents disagreeing with all changes. Two of the four comments received were vague or presented general observations that were not specific to the proposed rule. They included statements that FSA appraisals should be done in a fair and honest manner and that none of the proposals should be adopted. No changes were made to the rule as a result of these general comments. The remaining public comments are summarized as follows:

One respondent supported the proposal to allow FSA to approve loans with the condition that an acceptable appraisal, which reflects at least adequate collateral for the loan, will be obtained prior to loan closing. The respondent agreed that this would result in cost savings to the Government and provide better service to the applicant. The respondent also requested that the Agency adopt clear regulatory deadlines for completing the appraisal. The Agency believes that while delays in funding can occur, the appraisal requirement will not cause any additional delay in most loan closings. FSA will continue to monitor all applications closely to minimize any delays in ordering and funding appraisals, and this suggestion was not adopted.

One respondent stated that the FSA loan official should be given the latitude to decide whether a chattel or real estate appraisal is needed before loan approval. Currently, FSA's standard procedure allows the loan official to decide at what point in the loan-approval process appraisals will be completed. Therefore, no changes are being made to FSA policy due to this comment.

Two respondents supported the proposal to require a real-estate appraisal when real estate is taken as primary security for an operating loan only when the amount of the loan to be secured by the real estate exceeds $50,000. Previously, the regulation provided no set threshold dollar amount. The respondents agreed with FSA that adoption of the proposed rule will provide cost savings to the Government by reducing appraisal expenses and also will be consistent with the Lo-Doc requirements. As part of the Agency's streamlining project, Lo-Doc regulations were designed to reduce the time from receipt of a loan application to the disbursal of operating loan funds to a borrower. The proposed rule is adopted on this issue without change.

Two respondents commented on the proposal to increase the transaction amount triggering the need for a real-estate appraisal referenced in 7 CFR 1965.13(d), from $10,000 to $25,000. One respondent felt the limit should be changed from $10,000 to $50,000 because the $25,000 limit is already exceeded by ''many small real-estate transactions.'' The other respondent supported the change because they felt it increased farmers' flexibility by eliminating some potential delays in processing. The Agency believes that the $25,000 limit strikes a reasonable balance between cost savings and convenience for the borrower and local FSA personnel and the protection of the Government's interest. Further, direct FLP loans are specifically targeted to family farmers in need of supervised credit, and transactions above the $25,000 limit should receive a higher level of supervision. Therefore, the comment suggesting a $50,000 limit is not adopted.

FSA is currently required to appraise the real property retained when processing a partial release. This ensures that the property retained by the borrower, after the sale, is not adversely affected by the loss of the tract sold, such as where the sale removes access to a paved road. The Agency proposed to eliminate this requirement, in most cases, because this determination can usually be made without an appraisal. FSA may still obtain an appraisal on the property to be sold or retained when necessary to protect the Government's financial interests.

FSA received two comments on this proposal. One respondent supported the change, but indicated that language that allows the use of an existing FSA appraisal, as long as it is less than one year old, was removed. The respondent

is correct. However the rule refers to 7 CFR 761.7, which states that an existing appraisal can be used if certain conditions are met and the appraisal is less than 12 months old. Therefore, the proposed language will be adopted.

The other respondent thought the rule was confusing and advocated a policy that would allow local FSA officials to waive all appraisals if there would be ''obvious value in the property being retained.'' This comment suggests that the controlling factor in the Agency's decision is the overall amount of remaining security, when, in fact, it is that the remaining security is not harmed by the transaction. If the borrower is receiving adequate compensation for the property sold and all other regulatory requirements are met, the Agency may still grant the release even if the value of the remaining security is inadequate. The appraised value of the remaining security is not relevant to the decision as long as the value of the retained property is not reduced by the loss of the property released. The Agency also believes that the policy suggested by the respondent is too subjective and could lead to disparate treatment from office to office. Therefore, the comment is not adopted and the proposed language remains unchanged.

Executive Order 12866

This rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. All FSA direct loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System, and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule, and the costs to comply with it are the same for all entities.

In this rule, FSA revises both loan-making and loan-servicing regulations. In loan making, the Agency will not require a real estate appraisal completed by a certified general appraiser when real estate is used to secure an operating loan (OL) of less than $50,000. This action will affect less than 5 percent of OL's processed per year, or approximately 720 applicants, and will result in annual savings to the Agency of approximately $540,000 ($750/appraisal). In loan servicing, the Agency will increase the dollar threshold for requiring a real estate appraisal be completed by a certified general appraiser from $10,000 to $25,000 when considering partial releases, subordinations, exchanges, or other real estate servicing actions. The Agency estimates that this will eliminate the need for approximately 150 real estate appraisals, for annual savings to the Agency of approximately $112,500.

The Agency did not propose to impose any additional cost on the borrowers. In fact, the reduced need for appraisals should benefit borrowers with increased timeliness of loan decisions by the Agency. Therefore, the costs of compliance from this rule are deemed not significant. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799, and part 1940, subpart G. FSA has completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this executive order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the Notice relating to 7 CFR part 3015, subpart V published June 24, 1983 (48 FR 29115), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This final rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

This rule contains no new information collections that require approval under the Paperwork Reduction Act of 1995 for information collections previously approved by OMB under control numbers 0560–0158, 0560–0162, and 0560–0178.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404B–Emergency Loans
10.406B–Farm Operating Loans
10.407B–Farm Ownership Loans

List of Subjects

7 CFR Part 1910

Agriculture, Credit, Loan programs—housing and community development, Low and moderate income housing, Sex discrimination.

7 CFR Part 1941

Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

7 CFR Part 1965

Foreclosure, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

■ Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1910—GENERAL

■ 1. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

■ 2. Amend § 1910.4 by removing paragraph (b)(21) and by redesignating paragraph (b)(22) as new paragraph (b)(21).

■ 3. In § 1910.4, revise paragraph (j)(1)(i) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(j) * * *

(1) * * *

(i) Receipt by the applicant of a signed copy of the Agency's request for obligation of funds on the appropriate Agency form is written notice of loan approval and any conditions that must be met prior to loan closing. Loan approval conditions may include, but are not limited to, obtaining required real estate and chattel appraisals.

* * * * *

PART 1941—OPERATING LOANS

■ 4. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

■ 5. Revise § 1941.25(a)(4) to read as follows:

§ 1941.25 Appraisals.

(a) * * *

(4) A real estate appraisal is required when real estate is taken as primary security, as defined in § 1941.4, and the amount of the loan to be secured by the real estate exceeds $50,000.

* * * * *

PART 1965—REAL PROPERTY

■ 6. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

■ 7. In § 1965.13(d) revise the introductory paragraph to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

* * * * *

(d) *Appraisals.* A new appraisal report for the security to be transferred or released will be obtained in accordance with § 761.7 of this title as necessary to protect the financial interests of the Government or when the transaction involves more than $25,000. A new appraisal report for the security to be retained will be obtained in accordance with that section as necessary to protect the financial interests of the Government. Appraisal reports under this section may show the present market value of the property being transferred or released and the property being retained on a single appraisal report or on separate appraisal reports. The value of rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate security.

* * * * *

Signed in Washington, DC, on May 19, 2004.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 04–12202 Filed 6–1–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–216–AD; Amendment 39–13646; AD 2004–11–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 800A (Including C–29A and U–125 Variant) and 800B Airplanes; and Model Hawker 800 (Including U–125A Variant), and 800XP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model BAe.125 series 800A (including C–29A and U–125 variant) and 800B airplanes; and Model Hawker 800 (including U–125A variant) and 800XP airplanes; that requires a functional test of the engine fire extinguishing wiring for the appropriate installation; verification of the correct wiring connector installation; correction of wiring if necessary; and installation of new marker bands. This action is necessary to prevent incorrect wiring of the engine fire extinguisher bottles, which could result in one or both fire extinguisher bottles being discharged into the wrong engine nacelle. This action is intended to address the identified unsafe condition.

DATES: Effective July 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Airframe and Propulsion Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model BAe.125 series 800A (including C–29A and U–125 variant) and 800B airplanes; and Model Hawker 800 (including U–125A variant) and 800XP airplanes; was published in the **Federal Register** on February 26, 2004 (69 FR 8880). That action proposed to require a functional test of the engine fire extinguishing wiring for the appropriate installation; verification of the correct

wiring connector installation; correction of wiring if necessary; and installation of new marker bands.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 615 airplanes of the affected design in the worldwide fleet. The FAA estimates that 430 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $20 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $64,500, or $150 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this AD. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–11–01 Raytheon Aircraft Company: Amendment 39–13646. Docket 2003–NM–216–AD.

Applicability: Model BAe.125 series 800A (including C–29A and U–125 variant) and 800B airplanes; and Model Hawker 800 (including U–125A variant) and 800XP airplanes; as listed in Raytheon Service Bulletin SB 26–3610, Revision 1, dated September 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect wiring of the engine fire extinguisher bottles, which could result in one or both fire extinguisher bottles being discharged into the wrong engine nacelle, accomplish the following:

Function Test, Verification, Installation, and Corrective Action

(a) Within 70 flight hours or 30 days after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (a) (1) and (a) (2) of this AD per the Accomplishment Instructions of Raytheon Service Bulletin SB 26–3610, Revision 1, dated September 2003.

(1) Perform a functional test of the engine fire extinguishing wiring for appropriate installation, and verify the correct wiring connector installation. If any connector is wired incorrectly, prior to further flight, correct the wiring.

(2) Install the new marker bands.

Exception to Service Bulletin

(b) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Wichita Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The required actions shall be done in accordance with Raytheon Service Bulletin SB 26–3610, Revision 1, dated September 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on July 7, 2004.

Issued in Renton, Washington, on May 17, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11959 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–18–AD; Amendment 39–13647; AD 2004–11–02]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain Saab Model SAAB SF340A and Model SAAB 340B series airplanes, that requires inspections of the internal and external structure of the nacelles for cracks, deformations, or other damage, and corrective actions if necessary. This action is necessary to prevent fatigue cracks in the outer flange of the nacelle frame, which could result in reduced structural integrity of the nacelle supporting structure. This action is intended to address the identified unsafe condition.

DATES: Effective July 7, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 7, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and Model SAAB 340B series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5778). That action proposed to require inspections of the internal structure of the nacelles for cracks, deformations, or other damage, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has duly considered the comments received.

Request To Withdraw Proposed AD

One commenter requests that the proposed AD be withdrawn. The commenter cites a lack of information to justify rulemaking and questions whether the need for the proposed AD was substantiated by a review of service difficulty report (SDR) data. The commenter states that there is nothing in the proposed AD to indicate that the current maintenance program is inadequate for finding and addressing the cracks, deformation, or other damage that are the subject of the proposed AD. The commenter specifically requests that we contact the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, to determine whether the findings that prompted this action can be distinguished from findings during normal maintenance. The commenter also points to the lack of specific repair information in the proposed AD and relevant service information, and the commenter does not support the issuance of any AD without at least general guidance on the disposition of repairs as a result of findings.

We do not concur with the commenter's request to withdraw this AD. The service bulletin and the parallel Swedish airworthiness directive specify that the subject area is a ''blind'' area that is difficult to access and inspect. Consequently, discrepancies in the subject area may not be found during normal maintenance. We do review SDR data and, when necessary, we discuss significant issues with the cognizant airworthiness authority and the airplane manufacturer to ensure that safety issues are addressed. No change to the final rule is necessary in this regard.

Request To Revise Description of Structure Subject to Inspections

One commenter, the airplane manufacturer, requests that we revise the proposed AD to specify that the structure subject to the inspections is the internal and external structure of the nacelles. The commenter points out that, while the proposed AD specifies inspections of ''internal structure,'' the inspection area includes the skin of the nacelles, which is external structure.

We concur that the commenter's description more accurately depicts the actions defined in the service bulletin and have revised the Summary section and paragraph (a) of this AD accordingly. (The Explanation of Relevant Service Information section of the proposed AD is not restated in this final rule, so no change is possible to that section.) We find that this change does not increase the scope of the proposed AD because we did not state in the proposed AD that we intended to differ from the referenced service bulletin in this regard.

Request To Reference Additional Inspection Methods

The same commenter requests that we revise the proposed AD to clarify that an eddy current or dye penetrant inspection may be necessary, as specified in the Accomplishment Instructions of the referenced service bulletin. The proposed AD specifies only detailed and ultrasonic inspections.

We concur with the commenter's request and have revised paragraph (a) of this AD to specify inspections using detailed, ultrasonic, eddy current, and dye penetrant methods, as applicable. (The Explanation of Relevant Service Information section of the proposed AD is not restated in this final rule, so no change is possible to that section.) We find that this change does not increase the scope of the proposed AD because we did not state in the proposed AD that we intended to differ from the referenced service bulletin in the type of inspection methods that may be necessary.

Request To Clarify Action if Attachment Angle Is Damaged

The same commenter requests that we revise the proposed AD to clarify that, if discrepancies are found, the fire deck attachment angle cannot be repaired but must be replaced. The commenter notes that the attachment angle may be replaced per the Accomplishment Instructions of the referenced service bulletin, but other cracks, deformation, or damage must be repaired per data provided by the manufacturer.

We acknowledge the commenter's concerns and agree that some clarification is necessary. As specified in the Explanation of Relevant Service Information section of the proposed AD, corrective actions include replacement of the fire deck attachment angle with a new angle, and repair of cracks, deformation, and damage. We have revised paragraph (d) of this AD to clarify these corrective actions.

With regard to the commenter's request to specify that repairs must be done per data provided by the manufacturer, we explain in the proposed AD that, where the service bulletin specifies that operators may contact the manufacturer for disposition of repairs, this AD would require operators to repair per a method approved by the FAA or the LFV (or its delegated agent). No change to the AD is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted

above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 224 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $58,240, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–11–02 Saab Aircraft AB: Amendment 39–13647. Docket 2003–NM–18–AD.

Applicability: Model SAAB SF340A series airplanes with serial numbers 004 through 159 inclusive, and Model SAAB 340B series airplanes with serial numbers 160 through 459 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the outer flange of the nacelle frame, which could result in reduced structural integrity of the nacelle supporting structure, accomplish the following:

Inspections

(a) Perform detailed, ultrasonic, eddy current, and dye penetrant inspections; as applicable; of the internal and external structure of the nacelles for cracks, deformations, or other damage; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–54–043, dated December 18, 2002. Do the inspections at the applicable times specified by paragraph 1.D, ''Compliance,'' of the service bulletin, except as required by paragraphs (b) and (c) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Where the service bulletin specified in paragraph (a) of this AD specifies a compliance time relative to the release date of the service bulletin, this AD requires compliance following the effective date of this AD.

(c) Where the service bulletin specified in paragraph (a) of this AD uses ''accumulated flights'' and ''flights'' for compliance times, this AD requires operators to use ''total flight cycles'' and ''flight cycles.''

Repair

(d) If any crack, deformation, or damage is found during any inspection required by paragraph (a) of this AD, before further flight, replace the fire deck attachment angle with a new angle, and accomplish repairs, as applicable, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–54–043, dated December 18, 2002. Where the service bulletin specifies contacting the manufacturer for disposition of repairs, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsvarket (or its delegated agent).

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance with this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Saab Service Bulletin 340–54–043, dated December 18, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Swedish airworthiness directive No. 1–176, dated December 20, 2002.

Effective Date

(g) This amendment becomes effective on July 7, 2004.

Issued in Renton, Washington, on May 18, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11958 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–202–AD; Amendment 39–13648; AD 2004–11–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400F Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and –400F series airplanes. This action requires repetitive inspections for damage or arcing of the power feeder cables and conduit of the integrated drive generator (IDG) in the forward section of all four struts, and repair if necessary. This action also requires repetitive inspections for chafing damage or arcing of the adjacent hydraulic lines in the aft section of the outboard struts. Additionally, this action requires eventual terminating actions for the repetitive inspections. This action is necessary to prevent damage and arcing to the conduit and power feeder cables of the IDG, which could result in a fire in the engine strut; and to prevent damage to the adjacent hydraulic lines in the aft section of the outboard struts, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective June 17, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 2004.

Comments for inclusion in the Rules Docket must be received on or before August 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–202–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA has received a report of power feeder cables of the integrated drive generator (IDG) chafing against an adjacent hydraulic case drain line in the number 4 strut of certain Boeing Model 747–400 and –400F series airplanes. The chafing caused arcing from the power feeder cable that resulted in a leak in the hydraulic line. Investigation revealed that excessive slack in the power feeder cables could potentially cause a chafing condition with the hydraulic case drain line or the hydraulic pressure line. We also received reports indicating a chafed power feeder cable located inside the conduit of the forward section of the engine strut, damage to the cables and protective sleeve inside the conduit, and damage to the cable insulation. We received a report of an additional indication of a chafed power feeder cable inside the conduit, in which the resulting arcing between the cable and conduit appeared to have caused molten metal to drip onto the adjacent fuel tube and to burn a small hole in the tube. The engine struts have no provision for detection or containment of a fire. Such damage and arcing to the conduit and power feeder cables of the IDG, could result in an uncontrolled fire in the engine strut; and cause damage to the adjacent hydraulic lines in the aft section of the outboard struts, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

Explanation of Relevant Service Information

We have reviewed and approved the following Boeing Service Bulletins (SBs) and Alert Service Bulletins (ASBs):

- SB 747–24A2240, Revision 1, dated February 20, 2003, which describes procedures for general visual inspections of the power feeder cables and conduit of the integrated drive generator (IDG) for damage or arcing and repair if necessary, on all four engine struts.
- ASB 747–24A2247, dated July 10, 2003, which describes procedures for general visual inspections of the power feeder cables of the IDG and hydraulic lines on each outboard strut aft of the block clamp for chafing and arcing damage, and repair if necessary.
- SB 747–24A2242, Revision 1, dated August 14, 2003, which describes procedures for removing the conduit, installing a new shield/bracket assembly, and replacing two hydraulic lines in each engine strut. Those actions will prevent chafing inside the conduit and prevent chafing of the power feeder cables with the hydraulic lines. Accomplishment of those actions eliminates the need to continue the repetitive inspections described in SB 747–24A2240.
- ASB 747–24A2243, dated October 31, 2002, which describes procedures for replacing the wiring and tubing support bracket with a new bracket. Such replacement provides improved separation between the power feeder cables of the IDG and the hydraulic case drain line in the outboard struts, and eliminates the need to continue the repetitive inspections described in ASB 747–24A2247.

Accomplishment of the actions specified in the SBs and ASBs is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent damage and arcing to the conduit and power feeder cables of the IDG, which could result in a fire in the engine strut; and to prevent damage to the adjacent hydraulic lines in the aft section of the outboard struts, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require

approximately 14 work hours per airplane to accomplish the required inspections, at an average labor rate of $65 per work hour. The estimated cost for the required inspections is estimated to cost $910, per airplane, per inspection cycle.

It would also require between 52 and 56 work hours, per airplane, to accomplish the terminating actions required by this AD, at an average labor rate of $65 per work hour. Required parts to accomplish the terminating actions are estimated to cost approximately $14,188. Based on these figures, the cost impact of this AD would be between $24,588 and $25,628, per airplane, to accomplish the terminating actions.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–202–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2004–11–03 Boeing: Amendment 39–13648. Docket 2003–NM–202–AD.

Applicability: Model 747–400 and –400F series airplanes having line numbers 696 through 1310 inclusive and equipped with Rolls Royce engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage and arcing to the conduit and power feeder cables of the integrated drive generator (IDG), which could result in a fire in the engine strut; and to prevent damage to the adjacent hydraulic lines in the aft section of the outboard struts, which could result in reduced controllability of the airplane; accomplish the following:

Inspection for Damage or Arcing

(a) Within 90 days after the effective date of this AD, perform a general visual inspection for damage or arcing of the power feeder cables of the integrated drive generator (IDG) and the cable conduit, per the Accomplishment Instructions of Boeing Service Bulletin (SB) 747–24A2240, Revision 1, dated February 20, 2003. Before further flight, repair any damage per the SB. Thereafter, repeat the inspection at intervals not to exceed 10,000 flight hours, until the actions required by paragraph (c) of this AD are accomplished.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Inspection for Chafing and Arcing Damage

(b) Within 90 days after the effective date of this AD, perform a general visual inspection for chafing and arcing damage of the power feeder cables of the IDG and hydraulic lines on each outboard strut aft of the block clamp, per the Accomplishment Instructions of Boeing Alert Service Bulletin (ASB) 747–24A2247, dated July 10, 2003. Before further flight, repair any chafing or arcing damage per the ASB. Thereafter, repeat the inspection at intervals not to exceed 10,000 flight hours until the actions required by paragraph (d) of this AD are accomplished.

Terminating Requirements for Paragraph (a) of This AD

(c) Within 48 months after the effective date of this AD, remove the conduit, install a new shield/bracket assembly, and replace two hydraulic lines with two new hydraulic

lines in each engine strut, per the Accomplishment Instructions of Boeing SB 747–24A2242, Revision 1, dated August 14, 2003. Before further flight, perform related investigative actions and corrective actions per the Accomplishment Instructions of the SB. Accomplishment of these actions terminates the inspection requirements of paragraph (a) of this AD.

Terminating Requirements for Paragraph (b) of This AD

(d) Within 48 months after the effective date of this AD, replace the wiring and hydraulic tubing support bracket per the Accomplishment Instructions of Boeing ASB 747–24A2243, dated October 31, 2002. Accomplishment of these actions terminates the inspection requirements of paragraph (b) of this AD.

Alternative Methods of Compliance (AMOC)

(e) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 747–24A2240, Revision 1, dated February 20, 2003; Boeing Service Bulletin 747–24A2242, Revision 1, dated August 14, 2003; Boeing Alert Service Bulletin 747–24A2243, dated October 31, 2002; and Boeing Alert Service Bulletin 747–24A2247, dated July 10, 2003, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(g) This amendment becomes effective on June 17, 2004.

Issued in Renton, Washington, on May 18, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11957 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–047]

Drawbridge Operation Regulations: Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation; request for comments.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Long Beach Bridge, at mile 4.7, across Reynolds Channel New York. This temporary deviation will test a change to the drawbridge operation regulations to determine whether a permanent change is needed. Under this temporary deviation the Long Beach Bridge need not open for vessel traffic from 10 p.m. to midnight on July 3, 2004.

DATES: This temporary deviation is effective from July 3, 2004, through July 11, 2004. Comments must reach the Coast Guard on or before September 4, 2004.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch at one South Street, Battery Park Building, New York, NY 10004, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–047), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by September 4, 2004.

Background and Purpose

The Long Beach Bridge has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water. The existing regulations are listed at 33 CFR 117.799(g).

On April 27, 2004, the Town of Hempstead, Department of Public Works requested that the Long Beach Bridge opening schedule be temporarily changed to test an alternate operation schedule to allow the bridge to remain closed to facilitate vehicular traffic and public safety during the annual Salute to Veterans and Fireworks Display at Town Park on Lookout Point, New York.

Under this temporary deviation the Long Beach Bridge need not open for vessel traffic from 10 p.m. to midnight on July 3, 2004, with an alternate weather date of July 11, 2004, should the public event be postponed due to inclement weather on July 3, 2004.

This deviation from the operating regulations is authorized under 33 CFR 117.43, to test an alternate operating schedule.

Dated: May 21, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–12407 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–115]

RIN 1625–AA09

Drawbridge Operation Regulations: Mystic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the U.S. 1 Bridge, mile 2.8, across the Mystic River at Mystic,

Connecticut. This final rule changes the time the U.S. 1 Bridge opens between May 1 and October 31, from a quarter past the hour to twenty minutes before the hour. This action is expected to allow vessel traffic to transit with fewer delays through the two bridges in Mystic, Connecticut.

DATES: This rule is effective July 2, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–03–115) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The First Coast Guard Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 1, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Mystic River, Connecticut, in the **Federal Register** (69 FR 9562). No public hearing was requested and none was held.

Background and Purpose

The U.S. 1 Bridge has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water in the closed position. The existing regulations, listed at 33 CFR § 117.211(b), require the bridge to open on signal with a maximum delay of up to twenty minutes; except that, from May 1 through October 31, from 7:15 a.m. to 7:15 p.m., the draw need only open once an hour, at quarter past the hour. From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal after a six-hour advance notice is given.

The Coast Guard received a complaint in the spring of 2003, from a mariner, stating that the Mystic River U.S. 1 Bridge was not opening as required by the existing operation regulations at the designated 12:15 p.m. opening period.

The Coast Guard convened a meeting attended by the bridge owner, Connecticut Department of Transportation, the Mystic Connecticut Chamber of Commerce, and several commercial marine operators. It was discovered at that meeting that the bridge owner was not opening the U.S. 1 Bridge at 12:15 p.m. because they believed that the operation regulations had been changed in 1992. However, the Coast Guard only authorized a 90-day test deviation in 1992, to help determine if the elimination of the 12:15 p.m. opening was a reasonable proposal.

The Mystic Connecticut Chamber of Commerce then told the Coast Guard at the 2003 meeting that they believed that opening the U.S. 1 Bridge during the noontime period each day would cause severe vehicular traffic delays in downtown Mystic. The Coast Guard decided to conduct another temporary deviation for 90 days to determine if opening the U.S. 1 Bridge during the noontime period would adversely affect vehicular traffic. That 90-day temporary deviation, published at (68 FR 41716), was in effect from July 18, 2003, through October 15, 2003.

Additionally, the Mystic Connecticut Chamber of Commerce Marine Affairs Committee requested that the U.S. 1 Bridge opening times during the 2003 temporary test deviation be moved from a quarter past each hour to twenty minutes before each hour to help ease marine traffic congestion. The railroad bridge, downstream of the U.S. 1 Bridge, is more frequently closed to marine traffic during the first half of each hour as a result of the rail traffic schedule. By moving the opening times of the U.S. 1 Bridge to 20 minutes before each hour, vessel traffic transiting the U.S. 1 Bridge would be less likely to conflict with railroad traffic at the next bridge, thus helping relieve marine traffic congestion.

After the 2003 test deviation concluded we reviewed the vehicular traffic counts, bridge opening logs, and all the on-scene observations taken by Coast Guard personnel. We determined, after review of all the above data, that the noontime bridge openings did not adversely affect vehicular traffic. However, shifting the U.S. 1 Bridge opening periods from a quarter past each hour to twenty minutes before each hour did produce less delays to vessel traffic transiting the two bridges in Mystic because the railroad bridge was used more often during the first half of each hour for the passage of rail than during the second half of each hour.

As a result of all the above information the Coast Guard determined that the U.S. 1 Bridge opening schedule should be changed to require the U.S. 1 Bridge to open on signal at twenty minutes before each hour, instead of at a quarter past each hour during the summer months.

This rule would also eliminate the provision in the regulations at § 117.211 (b) that permits openings at the U.S. 1 Bridge to be delayed up to 20 minutes after a request is given. There is no present justification to delay marine traffic for up to twenty minutes.

Also, the provision in the existing regulations at 33 CFR 117.211(a)(3), that requires the draw to open immediately for public vessels of the United States, State and local vessels used for public safety, and vessels in emergency situations, will be eliminated from the regulations because it is now listed at 33 CFR 117.31, subpart (A), General Requirements.

Discussion of Comments and Changes

We received thirteen comment letters in response to the proposed rulemaking. Eight comment letters were in favor of the proposed rule change and four comment letters opposed the rulemaking. We also received a no objection comment letter.

The eight comment letters in favor of the proposed rule change stated that opening the U.S. 1 Bridge at twenty minutes before each hour allowed vessel traffic to transit up and downstream with less delays and did not adversely impact vehicular traffic in any way.

One comment letter in opposition to changing the bridge opening times from 15 minutes past each hour to twenty minutes before each hour stated that changing the opening time could cause confusion and result in traffic delays because mariners and motorists have become accustomed to the quarter past the hour bridge opening time over the years.

The second comment letter in opposition stated that the cost to implement the rule change was wasteful and that any change to the opening times would cause public confusion and disruption.

The third comment letter in opposition stated the basis for shifting the U.S. 1 Bridge opening times to the second half of each hour because most train traffic crossed the railroad bridge during the first half of each hour was risky since the trains were rarely on time.

The fourth comment letter in opposition stated that people who needed to cross the bridge to go to work on the hour would be required to depart their homes earlier to compensate for bridge openings at twenty minutes before the hour. No factual data was submitted to support any of the four negative comment letters.

Factual data was used by the Coast Guard to justify changing the U.S. 1 Bridge openings to twenty minutes before each hour instead of a quarter past each hour. The Coast Guard examined the 2003 bridge opening

records from the nearby railroad bridge downstream from the U.S. 1 Bridge. According to those bridge opening records, the downstream railroad bridge received rail traffic more often during the first half of each hour than during the second half of each hour. Therefore, moving the U.S. 1 Bridge openings to the second half of each hour would allow vessel traffic to transit through both bridges with fewer delays. Additionally, other data collected indicates utilizing this schedule will not result in an adverse affect on vehicular traffic in downtown Mystic. As a result of all the above information no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This conclusion is based on the fact that the U.S. 1 Bridge will continue to open once each hour at twenty before the hour instead of a quarter past each hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the U.S. 1 Bridge will continue to open once each hour at twenty minutes before the hour instead of a quarter past each hour.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 *note*) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.211, revise paragraphs (a)(3), (b) introductory text and (b)(1) to read as follows:

§ 117.211 Mystic River.

(a) * * *

(3) Commercial vessels shall be passed immediately at any time; however, the opening may be delayed up to eight minutes to allow trains, which have entered the drawbridge block and are scheduled to cross the bridge without stopping, to clear the block.

* * * * *

(b) The draw of the U.S. 1 Bridge, mile 2.8, at Mystic, shall open on signal except:

(1) From May 1 through October 31, from 7:40 a.m. to 6:40 p.m., the draw need only open hourly at twenty minutes before the hour.

* * * * *

Dated: May 21, 2004.

John L. Grenier,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 04–12408 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 63 (§§ 63.1200–63.1439), revised as of July 1, 2003, § 63.1331 is corrected by adding paragraph (a)(6) introductory text to read as follows:

§ 63.1331 Equipment leak provisions.

* * * * *

(a) * * *

(6) For pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems; owners or operators of affected sources producing PET shall comply with the requirements of paragraphs (a)(6)(i) and (ii) of this section instead of with the requirements of § 63.139. Owners or operators of PET affected sources shall comply with all other provisions of subpart H of this part for pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, except as specified in paragraphs (a)(6)(iii) through (v) of this section.

* * * * *

[FR Doc. 04–55509 Filed 6–1–04; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW–2003–0067; FRL–7668–9]

RIN 2040–AE62

National Primary Drinking Water Regulations: Analytical Method for Uranium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is taking direct final action to approve the use of three additional analytical methods for compliance determinations of uranium in drinking water. These methods use an inductively coupled plasma mass spectrometry (ICP–MS) technology that has gained wide acceptance in the analytical community. EPA believes that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides rule. (65 FR 76708) This rule does not withdraw approval of any previously approved monitoring methods for uranium.

EPA is publishing this rule without prior proposal because we view this as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to National Primary Drinking Water Regulations: Analytical Method for Uranium if adverse comments are filed.

Through this action, EPA only requests comment on whether approval of the ICP–MS methods published by EPA, American Society of Testing and Materials International (ASTM), and the Standard Methods Committee (EPA 200.8, ASTM D5673–03, and SM 3125), is appropriate for compliance determinations of uranium in drinking water. Readers should please note that EPA is not requesting comment on any other use of these three ICP–MS methods, use of any other ICP–MS method, or any issue associated with the uranium standard or its implementation, and EPA will not respond to any comments other than those concerning the approval of these specific methods (as cited) for compliance determinations of uranium in drinking water.

DATES: This rule is effective on August 31, 2004, without further notice, unless EPA receives adverse comment by July 2, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of August 31, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OW–2003–0067, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *OW-Docket@epa.gov.*
- Mail: OW Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 4 copies.
- Hand Delivery: OW Docket, EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OW–2003–0067. EPA's

policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). Please see the companion proposed rule published in the ''Proposed Rule'' section of today's **Federal Register**, entitled ''National Primary Drinking Water Regulations: Analytical Method for Uranium'' (see **ADDRESSES** section for instructions on submitting comments to the Water Docket).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OW Docket, EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: General Information—Lisa Christ, Office of Ground Water and Drinking Water, Mailcode: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8354; e-mail address: *christ.lisa@epa.gov,* Technical information—David Huber, Office of Ground Water and Drinking Water, Mailcode: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4878; e-mail address: *huber.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Entities potentially regulated by this regulation are public water systems that are classified as community water systems (CWSs). A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS [1]
Industry	Privately-owned community water systems	221310
State, Tribal, Local, and Federal Government	Publicly-owned community water systems	924110

[1] National American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.66 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What Is EPA's Statutory Authority and Background for This Final Rule?

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures.'' In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA, as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)). As discussed earlier in section I.A of this preamble, the action proposed herein would affect CWSs. CWSs are a subset of public water systems. (40 CFR 141.2)

On December 7, 2000 (65 FR 76708), EPA published a final radionuclides rule in the **Federal Register** that included monitoring requirements and a MCL of 30 micrograms per liter (30 µg/L) for uranium that took effect in December 2003. In the preamble to the December 2000 rule, EPA noted that several commenters asked EPA to consider the approval of compliance monitoring methods that use an inductively coupled plasma mass spectrometry (ICP–MS) technology. (65 FR 76724) These commenters suggested that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies approved in the December 2000 rule. In response to these comments, EPA stated that the Agency was reviewing ICP–MS

technology for possible proposal in a future rulemaking. EPA has completed this review and in today's direct final rule is approving three methods that use ICP–MS technology. The methods are equivalent and published by EPA, American Society for Testing and Materials International (ASTM), and the Standard Methods (SM) Committee. The methods are EPA 200.8, ASTM D5673–03, and SM 3125.

III. What Is EPA Doing Today?

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. These methods have been thoroughly vetted by industry and the drinking water community. The methods will decrease the implementation burden of the December 2000 Radionculides Rule that promulgated a drinking water standard for uranium. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to ''National Primary Drinking Water Regulations: Analytical Method for Uranium'' if adverse comments are filed. This rule will be effective on August 31, 2004, without further notice unless we receive adverse comment by July 2, 2004. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the companion proposed rule published separately in today's **Federal Register**.

IV. Summary of ICP–MS Technology

EPA reviewed ICP–MS methods published by EPA, ASTM International, and the Standard Methods Committee. In each of these methods, sample material in solution is introduced by pneumatic nebulization into a radiofrequency plasma where energy transfer processes cause desolvation, atomization and ionization. The ions are extracted from the plasma through a differentially pumped vacuum interface and separated on the basis of their mass-to-charge ratio by a quadrupole mass spectrometer having a minimum resolution capability of one atomic mass unit peak width at five percent peak height. The ions transmitted through the quadrupole are detected by an electron multiplier or Faraday detector and the ion information processed by a data handling system. The sensitivity of each ICP–MS method for compliance determinations of uranium in drinking water is acceptable and is sensitive enough to detect at less than one part per billion (1 ug/L). The uranium MCL is 30 ug/L.

EPA reviewed each of these methods for performance and applicability to compliance determinations of uranium in drinking water. Three of these methods, EPA 200.8, ASTM D5673–03 and SM 3125, have acceptable performance and are otherwise suitable for compliance determinations of uranium in drinking water. Method EPA 200.8 was published by EPA in 1994; method ASTM D5673–03 was published by ASTM International in 2003; and SM 3125 was published by the Standard Methods Committee in 1998. In today's action, EPA is approving the use of these ICP–MS methods for compliance determinations of uranium in drinking water. EPA is taking this action in response to stakeholder requests.

EPA is not, in today's action, approving the use of these methods for any other purposes. EPA notes that EPA 200.8 was approved for compliance determinations of several regulated metals in drinking water on December 5, 1994. (59 FR 62456) EPA also recognizes that the other two ICP–MS methods approved through today's action for determination of uranium may also be applicable to monitoring for other drinking water contaminants. Although the analytical scope of ASTM D5673–03 and SM 3125 extends beyond uranium, these two methods were not published until 2003 and 1998, respectively. In a later rulemaking, EPA may consider extending the use of ASTM D5673–03 and SM 3125 to compliance determinations of regulated metals.

Like flourometric and laser phosphorimetry methods, ICP–MS measures uranium mass only; therefore all caveats discussed in the December 2000 Radionuclides Rule on using mass methods to determine contributions to gross alpha also apply (65 FR 76724).

Today's direct final rule does not effect approval of the 15 methods currently specified at 40 CFR 141.25(a) for compliance determinations of uranium.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not impose any new requirements, it only approves three additional voluntary analytical methods for compliance determinations of uranium in drinking water.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition would be applied to this regulation as well.

This direct final rule imposes no cost on any entities over and above those imposed by the final Radionuclides Rule. (65 FR 76708) This action merely allows three additional analytical methods for compliance determinations of uranium in drinking water. The adoption of these methods are voluntary because drinking water systems can continue to use the existing approved methods.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or Tribal governments or the private sector. It merely provides drinking water utilities with three additional voluntary analytical methods to use to meet existing monitoring requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The adoption and use of these methods is voluntary because drinking water systems can continue to use the existing approved methods. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There is no cost to State and local governments, and the final rule does not preempt State law. This direct final rule imposes no cost on any State, or local governments. This final rule merely provides for the voluntary use of three additional analytical methods for compliance determinations of uranium in drinking water. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, (November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There is no cost to Tribal governments,

and the final rule does not preempt Tribal law. This final rule imposes no additional cost on any Tribal government. This final rule merely provides for the voluntary use of three additional analytical methods for compliance determinations of uranium in drinking water. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885 April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This final rule merely provides for the voluntary use of three additional analytical methods for compliance determinations of uranium in drinking water.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. In addition to approving EPA 200.8, EPA has decided to use two voluntary consensus methods (ASTM International D5673–03, and the Standard Methods (SM) Committee 3125) for compliance determinations of uranium in drinking water. Approval of these methods is in accordance with the goals of the NTTAA. EPA believes that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides Rule. (65 FR 76708) This rule does not withdraw approval of any previously approved monitoring methods for uranium. Copies of both voluntary consensus methods are available for viewing at the docket facility identified in section I.B.1.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 31, 2004.

List of Subjects for 40 CFR Part 141

Environmental protection, Chemicals, Incorporation by reference, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: May 24, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 2. Section 141.25 is amended as follows:

■ a. Revising the entry for uranium in the table at paragraph (a),

■ b. Revising footnote 1 in the table at paragraph (a),

■ c. Revising footnote 2 in the table at paragraph (a),

■ d. Revising footnote 3 in the table at paragraph (a),

■ e. Revising footnote 5 in the table at paragraph (a),

■ f. Revising footnote 6 in the table at paragraph (a),

■ g. Revising footnote 8 in the table at paragraph (a),

■ h. Revising footnote 12 in the table at paragraph (a), and

■ i. Adding footnote 13 in the table at paragraph (a). The revisions and addition read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) * * *

Contaminant	Methodology	Reference (method or page number)							
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]
*	*	*		*		*	*	*	
Uranium [12]	Radiochemical	908.0	.....	.....	.....	7500–U B			
	Fluorometric	908.1	.....	.....	.....	7500–U C (17th Ed.)	D 2907–97	R–1180–76, R–1181–76	U–04
	ICP–MS	[13] 200.8	.....	.....	.....	3125	D5673–03		

Contaminant	Methodology	Reference (method or page number)							
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]
	Alpha spectrometry.	.....	.....	00–07	p–33	7500–U C (18th, 19th or 20th Ed.)	D3972–97	R–1182–76	U–02
	Laser Phosphorimetry.	.....	.....	.....	.....		D5174–97		

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The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 and 13 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue, NW, Room B135, Washington, DC (Telephone: 202–566–2426); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

[1] "Prescribed Procedures for the Measurement of Radioactivity in Drinking Water", EPA 600/4–80–032, August 1980. Available at the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744, except Method 200.8, "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Revision 5.4, which is published in "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA 600–R–94–111, May 1994. Available at NTIS, PB95–125472.

[2] "Interim Radiochemical Methodology for Drinking Water", EPA 600/4–75–008(revised), March 1976. Available at NTIS, ibid. PB 253258.

[3] "Radiochemistry Procedures Manual", EPA 520/5–84–006, December, 1987. Available at NTIS, ibid. PB 84–215581.

[4] "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] "Standard Methods for the Examination of Water and Wastewater", 13th, 17th, 18th, 19th Editions, or 20th edition, 1971, 1989, 1992, 1995, 1998. Available at American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Methods 7110B, 7500–Ra B, 7500–Ra C, 7500–Ra D, 7500–U B, 7500–Cs B, 7500–I B, 7500–I C, 7500–I D, 7500–Sr B, 7500–3H B are in the 17th, 18th, 19th and 20th editions. Method 7110 C is in the 18th, 19th and 20th editions. Method 7500–U C Fluorometric Uranium is only in the 17th Edition, and 7500–U C Alpha spectrometry is only in the 18th, 19th and 20th editions. Method 7120 is only in the 19th and 20th editions. Methods 302, 303, 304, 305 and 306 are only in the 13th edition. Method 3125 is only in the 20th edition.

[6] *Annual Book of ASTM Standards*, Vol. 11.01 and 11.02, 1999; ASTM International any year containing the cited version of the method may be used. Copies of these two volumes and the 2003 version of D 5673–03 may be obtained from ASTM International. 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959.

[7] "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey*, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] "EML Procedures Manual", 28th (1997) or 27th (1990) Editions, Volumes 1 and 2; either edition may be used. In the 27th Edition Method Ra–04 is listed as Ra–05 and Method Ga–01–R is listed as Sect. 4.5.2.3. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

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[12] If uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conversion factor is based on the 1:1 activity ratio of U–234 and U–238 that is characteristic of naturally occurring uranium.

[13] "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry," Revision 5.4, which is published in "Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA 600–R–94–111, May 1994. Available at NTIS, PB 95–125472.

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[FR Doc. 04–12299 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0125; FRL–7359–2]

Novaluron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of novaluron in or on fruit, pome (group 11), apple, wet pomace; cotton, undelinted seed; cotton, gin byproducts; vegetables, tuberous and corm, subgroup 1C; meat, fat, and meat byproducts of sheep, horse, cattle, goat, hog, and poultry; milk; milk, fat; and eggs. Makhteshim-Agan of North America, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective June 2, 2004. Objections and requests for hearings must be received on or before August 2, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0125. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Daniel C. Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E–CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of February 25, 2004 (69 FR 8649) (FRL–7344–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F6430) by Makhteshim-Agan of North America, Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176. That notice included a summary of the petition prepared by Makhteshim-Agan of North America, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the insecticide novaluron, 1-[3-chloro-4-(1,1,2-trifluoro-2-trifluoro-methoxyethoxy)phenyl]-3-(2,6-difluorobenzoyl)urea, in or on fruit, pome (group 11) at 2.0 parts per million (ppm), apple, wet pomace at 8.0 ppm; cotton, undelinted seed at 0.60 ppm; cotton, gin byproducts at 30 ppm; vegetables, tuberous and corm, subgroup 1C at 0.05 ppm; sheep, horse, cattle, and goat, meat at 0.60 ppm; sheep, horse, cattle, and goat, meat byproducts (except liver and kidney) at 0.60 ppm; sheep, horse, cattle, and goat, fat at 11 ppm; sheep, horse, cattle, and goat, liver at 1.0 ppm; sheep, horse, cattle, and goat, kidney at 1.0 ppm; milk at 1.0 ppm; milk, fat at 20 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; hog, fat at 0.05 ppm; poultry, meat at 0.03 ppm; poultry, meat byproducts at 0.04 ppm; poultry, fat at 0.40 ppm; and eggs at 0.05 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for residues of novaluron on fruit, pome (group 11) at 2.0 ppm, apple, wet pomace at 8.0 ppm; cotton, undelinted seed at 0.60 ppm; cotton, gin byproducts at 30 ppm; vegetables, tuberous and corm, subgroup 1C at 0.05 ppm; sheep, horse, cattle, and goat, meat at 0.60 ppm; sheep, horse, cattle, and goat, meat byproducts (except liver and kidney) at 0.60 ppm; sheep, horse, cattle, and goat, fat at 11 ppm; sheep, horse, cattle, and goat, liver at 1.0 ppm; sheep, horse, cattle, and goat, kidney at 1.0 ppm; milk at 1.0 ppm; milk, fat at 20 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; hog, fat at 0.05 ppm; poultry, meat at 0.03 ppm; poultry, meat byproducts at 0.04 ppm; poultry, fat at 0.40 ppm; and eggs at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by novaluron are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No	Study Type	Results
870.3200	28–day Dermal toxicity - rat	Systemic NOAEL= 1,000 mg/kg/day; LOAEL= not established Dermal NOAEL= 1,000 mg/kg/day; LOAEL= not established
870.3700	Prenatal Developmental in rodents-rat.	Maternal NOAEL: ≥1,000; LOAEL: not established Developmental NOAEL: ≥ 1,000; LOAEL: not established

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No	Study Type	Results
870.3700	Prenatal developmental in non-rodents-rabbit.	Maternal NOAEL: ≥1,000; LOAEL: not established Developmental NOAEL: ≥ 1,000; LOAEL: not established
870.3800	Reproduction and fertility- rat	Parental NOAEL= Not established; LOAEL (M/F)= 74.2/84.0 mg/kg/day based on increased absolute and relative spleen weights. Offspring NOAEL= Not established; LOAEL (M/F)= 74.2/84.0 mg/kg/day based on increased absolute and relative spleen weights. Reproductive NOAEL (M/F)= 74.2 ≥1009.8 mg/kg/day; LOAEL= 297.5 mg/kg/day based on decreased epididymal sperm counts and increased age of preputial separation in the F_1 generation, reproductive LOAEL for females was not established
870.4100	Chronic toxicity - dog	NOAEL= 10 mg/kg/day LOAEL=100 mg/kg/day based on hematologic changes associated with histopathological changes in liver and spleen
870.4300	Chronic/carcinogenicity-rat	NOAEL (M/F) =1.1/1.4 mg/kg/day LOAEL (M/F)=30.6/39.5 mg/kg/day based on Erythrocyte damage and turnover resulting in a regenerative mild anemia
870.4300	Chronic/carcinogenicity-mouse	NOAEL (M/F)=3.6/4.3 mg/kg/day LOAEL (M/F)=53.4/63.3 mg/kg/day based on increased erythrocyte turnover due to hemoglobin oxidation and resulting in a mild anemia
870.5100	*Salmonella typhimurium* and *Escherichia coli* Reverse Mutation Assay.	Novaluron, tested up to the limit of solubility (2,500 μg/plate) and the limit dose (5,000 μg/plate), was not cytotoxic with or without S9 activation in four *S. typhimurium* strains and one strain of *E. coli*, and did not induce a genotoxic response in any strain
870.5100	*Salmonella typhimurium* - bacterial reverse gene mutation assay.	Novaluron, tested up to the limit of solubility (3333 μg/plate), was not cytotoxic with or without S9 activation in five *S. typhimurium* strains, and did not induce a genotoxic response in any strain
870.5300	Gene mutation	There was no evidence of biologically significant induction of mutant colonies over background
870.5375	*In vitro* mammalian chromosome aberration test.	Novaluron produced no evidence of clastogenic activity in primary human lymphocytes, in the presence or absence of S9 activation
870.5395	Mammalian erythrocyte micronucleus test in mice.	There was no statistically significant increase in the frequency of micronucleated polychromatic erythrocytes in mouse bone marrow at any dose or harvest time
870.5550	Unscheduled DNA Synthesis in HeLa S3 Human Epitheliod cells.	Novaluron was considered not to show any evidence of causing DNA damage to HeLa S3 epithelioid cells in this unscheduled DNA synthesis test for mutagenic potential
870.5500	Mutagenicity-rec assay with *Bacillus subtilis*.	Novaluron was equivocal for bacterial DNA damage in the absence of S9 activation, and negative for bacterial DNA damage in the presence of S9 activation
870.6200	Acute neurotoxicity screening battery- rat.	NOAEL= 650 mg/kg/day; LOAEL=2,000 mg/kg/day based on clinical signs (piloerection, irregular breathing), FOB parameters (increased head swaying, abnormal gait) and neuropathology (sciatic and tibial nerve degeneration).
870.6200	Subchronic neurotoxicity screening battery- rat.	NOAEL (M/F)=≥1,752/≥2,000 mg/kg/day; LOAEL= not established
870.7485	Metabolism-rat	Novaluron exhibited marginal absorption (16–18%), relatively rapid and complete excretion within 48 hours primarily via the feces and to a lesser extent via urine in rat
870.7600	Rat Dermal penetration	Recovery of administered radioactivity was an acceptable 90.19–105.26%. The maximum total absorbed dose (expressed as per cent of administered dose and determined as the sum of radioactivity in excreta, cage wash, untreated skin, fat, blood, and residual carcass) ranged from about 0.5% to 10% of that administered.

M - Male; F - Female

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the LOAEL is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{6}), or one in ten million (1×10^{7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for novaluron used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR NOVALURON FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary	Not applicable	None	An endpoint of concern attributable to a single dose was not identified. An acute RfD was not established
Chronic dietary (All populations)	NOAEL= 1.1 mg/kg/day UF = 100 Chronic RfD = 0.011 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD÷FQPA SF = 0.011 mg/kg/day	Combined chronic toxicity/carcinogenicity feeding in rat LOAEL = 30.6 mg/kg/day based on erythrocyte damage and turnover resulting in a regenerative anemia
Short-term incidental oral (1–30 days)	NOAEL= 4.38 mg/kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	90–day feeding study in rat LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver).
Intermediate-term incidental oral (1– 6 months)	NOAEL= 4.38 mg/kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	90–day feeding study in rat LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver)
Short-term dermal (1 to 30 days)	Not applicable	None	No toxicity observed at the limit dose in dermal study and there were no developmental toxicity concerns at the limit-dose; therefore, quantification of short-term dermal risk is not necessary

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR NOVALURON FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF* and LOC for Risk Assessment	Study and Toxicological Effects
Intermediate-term dermal (1 to 6 months)	Oral NOAEL = 4.38 mg/kg/day(dermal-absorption rate = 10%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	90–day feeding study in rat LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver)
Long-term dermal (>6months)	Oral NOAEL= 1.1 mg/kg/day (dermal-absorption rate = 10 %)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Combined chronic toxicity/carcinogenicity feeding in rat LOAEL = 30.6 mg/kg/day based on erythrocyte damage and turnover resulting in a regenerative anemia
Short-term inhalation (1 to 30 days)	Oral NOAEL = 4.38 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	90–day feeding study in rat LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver)
Intermediate-term inhalation (1 to 6 months)	Oral NOAEL = 4.38 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	90–day feeding study in rat LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit and RBC counts) and histopathology (increased hematopoiesis and hemosiderosis in spleen and liver).
Long-term inhalation (>6 months)	Oral NOAEL= 1.1 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Combined chronic toxicity/carcinogenicity feeding in rat LOAEL = 30.6 mg/kg/day based on erythrocyte damage and turnover resulting in a regenerative anemia
Cancer	Not likely to be carcinogenic to humans		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Currently, no tolerances have been established for the residues of novaluron, in or on any raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from novaluron in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An endpoint of concern attributable to a single dose of novaluron was not identified. Therefore, an acute dietary risk assessment was not conducted.

ii. *Chronic exposure*. In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis assumed 100% crop treated for all commodities; incorporated average field trial residues; empirical processing factors for apple juice (translated to pear juice); and DEEM™ (ver 7.76) default processing factors for the remaining processed commodities. Anticipated residues were calculated for meat and milk commodities and recommended tolerances were used for poultry commodities.

iii. *Cancer*. Novaluron is classified as ''not likely to be carcinogenic to humans'' based on the lack of evidence for carcinogenicity in mice and rats. Therefore, a quantitative cancer risk assessment was not conducted.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for novaluron in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on

the physical characteristics of novaluron. Novaluron may reach surface water or ground water via the parent compound or via its chlorophenyl urea and chloroaniline degradates. Therefore, concentrations of novaluron and its chlorophenyl urea and chloroaniline degradates in surface water and ground water were estimated by using modeling.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and screening concentration in ground water (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier I model) before using PRZM/EXAMS (a Tier II model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. Tier II Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) modeling was performed to estimate drinking water concentrations for novaluron (parent) in surface water.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a Tier I model) before using PRZM/EXAMS (a Tier II model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. The FIRST model was used to obtain surface water estimates for the degradate chlorophenyl urea and chloroaniline. The estimated drinking water concentration values are meant to represent upper-bound estimates of the concentrations that might be found in surface water and ground water based upon existing and proposed uses. Of the three estimated drinking water concentration values, chronic estimates for the terminal metabolite, chloroaniline are the highest (100% conversion from parent to aniline was assumed). This is consistent with the expected degradation pattern for novaluron. Therefore, the estimated drinking water concentration value for chloroaniline was used to assess chronic aggregate risk.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health LOC.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to novaluron they are further discussed in the aggregate risk sections in this Unit.

Based on the PRZM/EXAMS, FIRST and SCI-GROW models, the EECs of novaluron for chronic exposures are estimated to be 2.61 parts per billion (ppb) for surface water and 0.009 ppb for ground water. Since an acute dietary risk assessment was not needed, EECs of novaluron for acute exposures to surface water and ground water were not used.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Novaluron is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to novaluron and any other substances and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that novaluron has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There are no residual uncertainties for pre-/post-natal toxicity. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure to novaluron in developmental toxicity

studies. There is no quantitative or qualitative evidence of increased susceptibility to novaluron following pre-/post-natal exposure in a 2–generation reproduction study.

3. *Conclusion*. There is a complete toxicity data base for novaluron and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA SF was reduced to 1X, based upon the following: As mentioned above, there is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to in utero exposure to novaluron in developmental toxicity studies. There is no quantitative or qualitative evidence of increased susceptibility to novaluron following pre-/post-natal exposure in a 2–generation reproduction study. In addition, there is no concern for developmental neurotoxicity resulting from exposure to novaluron, and a developmental neurotoxicity study (DNT) study is not required. Furthermore, the chronic dietary food exposure assessment assumes 100% crops treated for all commodities. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded. Finally, there are no proposed or existing uses for novaluron which result in residential exposure.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. An endpoint of concern attributable to a single dose was not identified. Therefore, no acute risk is expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to novaluron from food will utilize 18% of the cPAD for the U.S. population, 68% of the cPAD for children 1 to 2 years old. There are no residential uses for novaluron that result in chronic residential exposure to novaluron. In addition, there is potential for chronic dietary exposure to novaluron in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO NOVALURON

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.011	18	2.61	0.009	320
Females, (13–49 years old)	0.011	12	2.61	0.009	290
All infants	0.011	31	2.61	0.009	76
Children, (1–2 years old)	0.011	68	2.61	0.009	35
Youth, (13–19 years)	0.011	16	2.61	0.009	280

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Novaluron is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Novaluron is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's LOC.

5. *Aggregate cancer risk for U.S. population*. Novaluron has not been shown to be carcinogenic. Therefore, novaluron is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general

population, and to infants and children from aggregate exposure to novaluron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology — is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits for novaluron.

V. Conclusion

Therefore, the tolerances are established for residues of novaluron, 1-[3-chloro-4-(1,1,2-trifluoro-2-trifluoro-methoxyethoxy)phenyl]-3-(2,6-difluorobenzoyl)urea, in or on fruit, pome (group 11) at 2.0 ppm, apple, wet pomace at 8.0 ppm; cotton, undelinted seed at 0.60 ppm; cotton, gin byproducts at 30 ppm; vegetables, tuberous and corm, subgroup 1C at 0.05 ppm; sheep, horse, cattle, and goat, meat at 0.60 ppm; sheep, horse, cattle, and goat, meat byproducts (except liver and kidney) at 0.60 ppm; sheep, horse, cattle, and goat, fat at 11 ppm; sheep, horse, cattle, and goat, liver at 1.0 ppm; sheep, horse, cattle, and goat, kidney at 1.0 ppm; milk at 1.0 ppm; milk, fat at 20 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; hog, fat at 0.05 ppm; poultry, meat at 0.03 ppm; poultry, meat byproducts at 0.04 ppm; poultry, fat at 0.40 ppm; and eggs at 0.05 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0125 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 2, 2004.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0125, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 2004.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.598 is added to read as follows:

§ 180.598 Novaluron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide novaluron, 1-[3-chloro-4-(1,1,2-trifluoro-2-trifluoro-methoxyethoxy)phenyl]-3-(2,6-difluorobenzoyl)urea, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apple, wet pomace	8.0
Cattle, fat	11
Cattle, kidney	1.0
Cattle, liver	1.0
Cattle, meat	0.60
Cattle, meat byproducts, except liver and kidney	0.60
Cotton, gin byproducts	30
Cotton, undelinted seed	0.60
Eggs	0.05
Fruit, pome, group 11	2.0
Goat, fat	11
Goat, kidney	1.0
Goat, liver	1.0
Goat, meat	0.60
Goat, meat byproducts except liver and kidney	0.60
Hog, fat	0.05
Hog, meat	0.01
Hog, meat byproducts	0.01
Horse, fat	11
Horse, kidney	1.0
Horse, liver	1.0
Horse, meat	0.60
Horse, meat byproducts, except liver and kidney	0.60
Milk	1.0
Milk, fat	20
Poultry, fat	0.40
Poultry, meat	0.03
Poultry, meat byproducts	0.04
Sheep, fat	11
Sheep, kidney	1.0
Sheep, liver	1.0
Sheep, meat	0.60
Sheep, meat byproducts, except liver and kidney	0.60
Vegetables, tuberous and corn, subgroup 1C	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

[FR Doc. 04–12316 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7668–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Combe Fill North Landfill Superfund site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region II Office announces the deletion of the Combe Fill North Landfill Superfund site from the National Priorities List (NPL). The Combe Fill North Landfill site is located in Mount Olive Township, Morris County, New Jersey. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the Combe Fill North Site and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that the remedial actions taken at the Combe Fill North Site protect public health and the environment without any further monitoring or restriction.

EFFECTIVE DATE: June 2, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela J. Baxter, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4416.

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: the Combe Fill North Landfill Superfund site, Mount Olive Township, Morris County, New Jersey. A Notice of Intent to Delete for the Combe Fill North Landfill site was published in the **Federal Register** on February 24, 2004 (69 FR 8353). The closing date for comments on the Notice of Intent to Delete was March 25, 2004. EPA received no comments regarding this action. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and Recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 19, 2004.

Jane M. Kenny,

Regional Administrator—Region II.

■ For the reasons set out in the preamble, part 300, title 40 of Chapter I of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the entry for ''Combe Fill North Landfill, Mount Olive Township, New Jersey.''

[FR Doc. 04–12301 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7833]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of

the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days. *National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region VIII				
South Dakota: Cheyenne River Sioux Tribe Reservation, Ziebach County.	461203	February 25, 1997, Emerg.; June 8, 1998, Reg.; June 2, 2004, Susp.	May 3, 2004	June 2, 2004.
Region V				
Illinois:				
Albers, Village of, Clinton County	170045	March 10, 1975, Emerg.; October 5, 1984, Reg.; June 2, 2004, Susp.	June 2, 2004	Do.
Breese, City of, Clinton County	170046	February 3, 1976, Emerg.; February 6, 1984, Reg.; June 2, 2004, Susp.	.....do	Do.
Carlyle, City of, Clinton County	170047	September 8, 1975, Emerg.; September 4, 1985, Reg. June 2, 2004.	.....do	Do.
Clinton County, Unincorporated Areas ..	170044	June 10, 1977, Emerg.; May 1, 1987, Reg.; June 2, 2004, Susp.	.....do	Do.
Germantown, Village of, Clinton County	170049	March 31, 1983, Emerg.; July 20, 1984, Reg.; June 2, 2004, Susp.	.....do	Do.
Keyesport, Village of, Clinton County ...	170860	July 19, 1978, Emerg.; August 19, 1985, Reg.; June 2, 2004, Susp.	.....do	Do.
New Baden, Village of, Clinton County	170050	November 25, 1975, Emerg.; September 4, 1986, Reg.; June 2, 2004, Susp.	.....do	Do.
Trenton, City of, Clinton County	170924	December 24, 2002, Emerg.; June 2, 2004, Reg.; June 2, 2004, Susp.	.....do	Do.
Region VII				
Missouri: Albany, City of, Gentry County	290145	July 23, 1975, Emerg.; August 19, 1985, Reg.; June 2, 2004, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I				
Massachusetts: North Reading, Town of, Middlesex County.	250209	March 17, 1972, Emerg.; April 3, 1978, Reg.; June 16, 2004, Susp.	June 16, 2004 ..	June 16, 2004.
Region II				
New York:				
Newfane, Town of, Niagara County	360504	April 10, 1973, Emerg.; November 18, 1981, Reg.; June 16, 2004, Susp.	.....do	Do.
Niagara Falls, City of, Niagara County	360506	May 9, 1973, Emerg.; March 16, 1983, Reg.; June 16, 2004, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–12370 Filed 6–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4. *National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Delaware: New Castle (FEMA Docket No. D–7549).	Unincorporated Areas.	Nov. 10, 2003, Nov. 17, 2003 *The News Journal*.	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	Oct. 30, 2003	105085 G
Florida: Orange (FEMA Docket No. D–7549).	Unincorporated Areas.	Nov. 5, 2003, Nov. 12, 2003, *Orlando Sentinel*.	M. Krishnamurthy, Ph.D., P.E., Orange County Stormwater Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	Feb. 11, 2004	120179 E
Kentucky:					
Jefferson (FEMA Docket No. D–7549).	Unincorporated Areas.	Oct. 27, 2003, Nov. 3, 2003, *The Courier-Journal*.	The Honorable Jerry Abramson, Mayor of Metro Louisville/Jefferson County, 527 West Jefferson Street, Suite 400, Louisville, Kentucky 40202.	Oct. 17, 203	210120 D
(FEMA Docket No. D–7549).	Lexington-Fayette Urban County Government.	Oct. 10, 2003, Oct. 17, 2003, *Lexington Herald-Leader*.	The Honorable Teresa Isaac, Mayor of the Lexington-Fayette, Urban County Government, 200 East Main Street, 12th Floor, Lexington, Kentucky 40507.	Jan. 16, 2004	210067 C
Pike (FEMA Docket No. D–7549).	Unincorporated Areas.	Nov. 5, 2003, Nov. 12, 2003, *Appalachian News-Express*.	The Honorable William M. Deskins, Pike County Judge/Executive, Pike County Courthouse, 146 Main Street, Pikeville, Kentucky 41501.	Oct. 29, 2003	210298 F
Mississippi:					
Hinds, Rankin, and Madison (FEMA Docket No. D–7549).	City of Jackson ...	Oct. 7, 2003, Oct. 14, 2003, *The Clarion-Ledger*.	The Honorable Harvey Johnson, Jr., Mayor of the City of Jackson, P.O. Box 17, 219 South President Street, Jackson, Mississippi 39205–0017.	Jan. 13, 2004	280072 F,G
Madison (FEMA Docket No. D–7549).	Unincorporated Areas.	Oct. 7, 2003, Oct. 14, 2003, *The Clarion-Ledger*.	Mr. David H. Richardson, President of the Madison County Board of Supervisors, P.O. Box 608, 146 West Center Street, Canton, Mississippi 39046.	Jan. 13, 2004	280228 D
Madison (FEMA Docket No. D–7549).	City of Ridgeland	Oct. 7, 2003, Oct. 14, 2003, *The Clarion-Ledger*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	Jan. 13, 2004	280110 D
Madison (FEMA Docket No. D–7549).	City of Ridgeland	Oct. 13, 2003, Oct. 20, 2003, *The Clarion-Ledger*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	Oct. 6, 2003	280110 D
North Carolina: Durham (FEMA Docket No. D–7549).	City of Durham ...	Oct. 21, 2003, Oct. 28, 2003, *The Herald-Sun*.	The Honorable William V. Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	Jan. 27, 2004	370086 G
Puerto Rico (FEMA Docket No. D–7549).	Commonwealth ...	Nov. 7, 2003, Nov. 14, 2003, *The San Juan Star*.	The Honorable Sila M. Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902–0082.	Feb. 13, 2004	720000 C
South Carolina:					
Charleston (FEMA Docket No. D–7547).	City of Charleston	Sept. 15, 2003, Sept. 22, 2003, *Post and Courier*.	The Honorable Joseph P. Riley, Jr., Mayor of the City of Charleston, P.O. Box 652, Charleston, South Carolina 29401.	Dec. 22, 2003	455412 G
Charleston (FEMA Docket No. D–7549).	City of Isle of Palms.	Nov. 6, 2003, Nov. 13, 2003, *Post and Courier*.	The Honorable F. Michael Sottile, Mayor of the City of Isle of Palms, P.O. Box 508, Isle of Palms, South Carolina 29451.	Oct. 30, 2003	455416 E
Virginia:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dickenson (FEMA Docket No. D–7547).	Unincorporated Areas.	Oct. 1, 2003, Oct. 8, 2003, *The Dickenson Star*.	Mr. Keith L. Viers, Dickenson County Administrator, Administrative Office, P.O. Box 1098, Clintwood, Virginia 24228.	Jan. 7, 2003	510253 C
Russell (FEMA Docket No. D–7547).	Unincorporated Areas.	Oct. 1, 2003, Oct. 8, 2003, *Lebanon News*.	Mr. Frank Horton, Chairman of the Russell County Board of Supervisors, P.O. Box 1208, Lebanon, Virginia 24266.	Jan. 7, 2003	510317 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 26, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–12372 Filed 6–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7557]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Houston	City of Dothan	Mar. 4, 2004, Mar. 11, 2004, *The Dothan Eagle*.	The Honorable Chester L. Sowell, III, Mayor of the City of Dothan, P.O. Box 2128, Dothan, Alabama 36302.	June 10, 2004	010104 E
Colbert	City of Muscle Shoals..	Mar. 24, 2004, Mar. 31, 2004, *Times Daily*.	The Honorable David H. Bradford, Mayor of the City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, Alabama 35662.	Apr. 17, 2004	010047 C
Tuscaloosa	City of Tuscaloosa.	Mar. 24, 2004, Mar. 31, 2004, The Tuscaloosa News.	The Honorable Alvin P. Dupont, Mayor of the City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, Alabama 35403.	June 30, 2004	010203 E
Delaware: New Castle.	Unincorporated Areas.	Apr. 2, 2004, April 9, 2004, *The News Journal*.	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	July 9, 2004	105085 G
Florida:					
Charlotte A	Unincorporated Areas.	Apr. 7, 2004, April 14, 2004, *Sun Herald*.	Mr. Bruce D. Loucks, Charlotte County Administrator, 18500 Murdock Circle, Port Charlotte, Florida 33948.	Mar. 30, 2004	120061 F
Hillsborough	Unincorporated Areas.	Apr. 14, 2004, April 21, 2004 *Tampa Tribune*.	Ms. Patricia G. Bean, Hillsborough County Administrator, County Center, 26th Floor, 601 East Kennedy Boulevard, Tampa, Florida 33602.	Apr. 5, 2004	120112 C
Dade	City of Miami	Mar. 5, 2004, March 12, 2004, *Miami Herald*.	The Honorable Manuel A. Diaz, Mayor of the City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	Feb. 27, 2004	120650 J
Orange	Unincorporated Areas.	Apr. 7, 2004, Apr. 14, 2002 *Orlando Sentinel*.	Mr. Krishnamurthy, Ph.D. P.E., Orange County Stormwater, Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	July 14, 2004	120179 E
Broward	City of Parkland	Mar. 8, 2004 March 15, 2004 *The Sun-Sentinel*.	The Nonorable Bob Marks, Mayor of the City of Parkland, 6600 University Drive, Parkland, Florida 33067.	Mar. 1, 2004	120051 F
Georgia:					
Jackson	Unincorporated Areas.	Apr. 14, 2003, Apr. 21, 2004, *The Jackson Herald*.	Mr. Al Crace, Jackson, County Manager, 67 Athens Street Jefferson, Georgia 30549.	Apr. 1, 2004	130345 A
Chatham	City of Savannah	Apr. 6, 2004, Apr. 13, 2004 *Savannah, Georgia*.	The Honorable Floyd Adams, Jr. Mayor of the City of Savannah, P.O. Box 1027, Savannah, Georgia 31402.	Mar. 30, 2004	135163 C
New Jersey: Hudson.	Township of North Bergen.	Mar. 31, 2004, Apr. 7, 2004, *The Jersey Journal*.	The Honorable Nicholas J. Sacco, Mayor of the Township of North Bergen, 4233 Kennedy Boulevard, North Bergen, New Jersey 07047.	Mar. 23, 2004	340225 C
North Carolina: Orange.	Unincorporated Areas.	Jan. 28, 2004, Feb. 4, 2004, *Chapel Hill Herald*.	Mr. John M. Link, Jr., Orange County Manager, P.O. Box 8181, 200 South Cameron Street, Hillsborough, North Carolina 27278.	May 4, 2004	370342 B
South Carolina:					
York	City of Rock Hill.	Mar. 24, 2004, Mar. 31, 2004, *The Herald*.	The Honorable Doug Echols, Mayor of the City of Rock Hill, P.O. Box 11706, Rock Hill, South Carolina 29731.	June 30, 2004	450196 C
York	Unincorporated Areas.	Mar. 24, 2004, Mar. 31, 2004, *The Herald*.	Mr. Alfred W. Green, York County Manager, P.O. Box 66, York, South Carolina 29745–0066.	June 30, 2004	450193 C
Tennessee:					
Fayette	Unincorporated Areas.	Mar. 3, 2004, Mar. 10, 2004, *The Fayette Falcon*.	The Honorable Rhea Taylor, Mayor of Fayette County, P.O. Box 218, Aomerville, Tennessee 38068.	Nov. 21, 2003.	470352 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Shelby	City of Memphis.	Feb. 24, 2004, Mar. 2, 2004, *The Commercial Appeal*.	The Honorable Willie W. Herenton, Ph.D., Mayor of the City of Memphis 125 North Main Street, Suite 700, Memphis, Tennessee 38103.	June 1, 2004	470177 E
Nashville and Davidson.	Metropolitan Government.	Jan. 26, 2004, Feb. 2, 2004, *The Tennessean*.	The Honorable Bill Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, 225 Polk Avenue, Nashville, Tennessee 37202..	Feb. 16, 2004	470040 F
Virginia:					
Henrico	Unincorporated Areas.	Apr. 20, 2004, Apr. 27, 2004, *The Richmond Times*.	Ms. Patricia S. O'Bannon, Chairman of the Henrico County Board of Supervisors, P.O. Box 27032, Richmond, Virginia 23273.	Apr. 12, 2004	510077 B
Loudoun	Unincorporated Areas.	Mar. 10, 2004, Mar. 17, 2004, *Loudoun Times Mirror*.	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street., S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	June 16, 2004	510090 D
Norfolk	Independent City	Apr. 5, 2004, Apr. 12, 2004, *The Virginia-Pilot*.	The Honorable Paul D. Fraim, Mayor of the City of Norfolk, 1109 City Hall Building 810 Union Street, Norfolk, Virginia 23510.	Mar. 29, 2004	510104 E
Prince William	Unincorporated Areas.	Mar. 17, 2004, Mar. 24, 2004, *Potomac News*.	Mr. Craig Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	June 23, 2004	510119 D
Independent City.	City of Winchester.	Mar. 15, 2004, Mar. 22, 2005, *Winchester Star*.	Mr. Edward C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	Mar. 4, 2004	51073 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 26, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–12373 Filed 6–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
MARYLAND	
St. Mary's County (Unincorporated Areas) (FEMA Docket No. D7578)	
Back Creek:	
Approximately 0.62 mile upstream of confluence with Cuckold Creek	•6
Approximately 1.25 miles upstream of confluence with Cuckold Creek	•22
Blake Creek:	
Approximately 1.14 miles upstream of confluence with Potomac River	•5
Approximately 1.70 miles upstream of confluence with Potomac River	•13
Broad Run:	
At the confluence with Brooks Run	•82
Approximately 0.17 mile upstream of confluence with Brooks Run	•82
Brooks Run:	
At the confluence with McIntosh Run	•43
Approximately 1.24 miles upstream of confluence with McIntosh Run	•83
Budds Creek:	
Approximately 0.5 mile upstream of confluence with Wicomico River	•6
Approximately 1.1 miles upstream of State Route 234	•64
Budds Creek Tributary 1:	
At the confluence with Budds Creek	•15
Approximately 0.5 mile upstream of the confluence with Budds Creek	•25
Bull Run:	
Approximately 0.19 mile upstream of confluence with Chaptico Creek	•6
Approximately 0.3 mile upstream of Manor Road	•49
Burnt Mill Creek:	
Approximately 750 feet upstream of confluence with McIntosh Run	•33
At confluence of Burnt Mill Creek Tributary	•88
Burnt Mill Creek Tributary:	
At confluence with Burnt Mill Creek	•88
Approximately 0.36 mile upstream of confluence with Burnt Mill Creek	•96
Burroughs Run:	
At confluence with Bull Run	•10
Approximately 0.37 mile upstream of confluence with Bull Run	•17
Canoe Neck Creek Tributary:	
Approximately 0.24 mile upstream of Canoe Neck Creek	•6
Approximately 0.94 mile upstream of confluence with Canoe Neck Creek	•21
Carthagena Creek:	
Approximately 0.86 mile downstream of Drayden Road	•5
Approximately 1,680 feet upstream of Drayden Road	•27
Cat Creek:	
Approximately 0.79 mile upstream of confluence with Patuxent River	•7
Approximately 1.85 miles upstream of confluence with Patuxent River	•24
Chaptico Creek (Downstream Portion):	
Approximately 2,243 feet upstream of the confluence with Bull Run	•6
At confluence with Nelsons Run	•6
Chaptico Creek (Upstream Portion):	
Approximately 400 feet downstream of confluence with Lacy Run	•55
Approximately 3.1 miles upstream of confluence of Lacy Run	•177
Church Creek:	
Approximately 850 feet downstream of State Route 5	•5
Approximately 1,585 feet upstream of State Route 5	•16
Church Creek Tributary:	
At confluence with Church Creek	•14
Approximately 1,160 feet upstream of the confluence with Church Creek	•16
Coatigan Run:	
Approximately 0.66 mile upstream of confluence with Patuxent River	•7
Approximately 2.04 miles upstream of confluence with Patuxent River	•29
Coffee Hill Run:	
Approximately 1.03 miles upstream of confluence with Chaptico Creek	•28
Approximately 0.47 mile upstream of Bethel Church Road	•86
Cuckold Creek:	
Approximately 1.17 miles upstream of confluence with Forrest Landing Cove	•6
Approximately 1.44 miles upstream of confluence with Forrest Landing Cove	•12
Cuckold Creek Tributary 1:	
Approximately 0.6 mile downstream of Sotterley Road	•6
Approximately 0.47 mile upstream of Sotterley Road	•24
Cuckold Creek Tributary 2:	
At confluence with Cuckold Creek Tributary 1	•15
Approximately 600 feet upstream of confluence with Cuckold Creek Tributary 1	•16
Cuckold Creek Tributary 3:	
At confluence with Cuckold Creek Tributary 1	•17
Approximately 0.43 mile upstream of confluence with Cuckold Creek Tributary 1	•26
Dynard Run:	
Approximately 800 feet downstream of Colton Point Road	•6
Approximately 1.03 miles upstream of Colton Point Road	•37
Eastern Branch:	
Approximately 400 feet upstream of confluence with Hillton Run	•5
Approximately 1.7 miles upstream of confluence with Pembrook Run	•51
Fisherman Creek:	
Approximately 595 feet upstream of Saint Mary's River	•5
Approximately 1.32 miles upstream of State Route 5	•20
Fisherman Creek Tributary:	
At confluence with Fisherman Creek	•10
Approximately 0.40 mile upstream of confluence with Fisherman Creek	•18
Forrest Hall Branch:	
Approximately 0.84 mile upstream of confluence with Hayden Run	•50

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 1.4 miles upstream of Foley Mattingly Road	•98
Glebe Run:	
Approximately 1,470 feet downstream of State Route 5	•6
Approximately 1.25 miles upstream of State Route 5	•40
Gravely Run:	
At the confluence with Glebe Run	•20
Approximately 1.15 miles upstream of State Route 471	•57
Greenhill Run:	
Upstream of Maypole Road	•19
Approximately 0.45 mile upstream of Maypole Road	•37
Hayden Run:	
Approximately 400 feet upstream of confluence with Forrest Hall Branch	•39
Approximately 2.75 miles upstream of confluence with Forrest Hall Branch	90
Herring Creek:	
Approximately 1.1 miles downstream of Beauvue Road	•8
Approximately 0.44 mile upstream of Beauvue Road	•22
Horse Landing Creek:	
Approximately 0.31 mile upstream of confluence with Patuxent River	•7
Approximately 1.85 miles upstream of confluence with Patuxent River	•34
Indian Creek:	
At confluence with Unnamed Creek 1	•6
Approximately 3.6 miles upstream of confluence with Unnamed Creek 1	•94
Indiantown Creek:	
Approximately 950 feet upstream of confluence with Chaptico Bay	•5
Approximately 0.93 mile upstream of confluence with Chaptico Bay	•27
Johns Creek:	
Approximately 1,200 feet upstream of confluence with St. Mary's River	•16
Approximately 0.89 mile upstream of State Route 249	•71
Killpeck Creek:	
Approximately 400 feet upstream of confluence of Lockes Swamp Creek	•6
Approximately 4.04 miles upstream of confluence with Lockes Swamp Creek	•90
Lacy Run:	
At confluence with Chaptico Creek	•57
Approximately 1.19 miles upstream of confluence with Chaptico Creek	•91
Lockes Swamp Creek:	
Approximately 0.31 mile upstream of confluence with Killpeck Creek	•7
Approximately 4.43 miles upstream of confluence with Killpeck Creek	•95
Locust Run:	
At confluence with St. Clements Creek	•37
Approximately 1.31 miles upstream of confluence with St. Clements Creek	•63
Lows Run:	
At the confluence with Brooks Run	•65
Approximately 0.4 mile upstream of St. Johns Road	•83
McIntosh Run:	
Approximately 0.55 mile downstream of Pleasant Valley Avenue	•39
Approximately 0.91 mile upstream of Secretariat Drive	•83
Miski Run:	
Approximately 0.2 mile upstream of confluence with McIntosh Run	•28
Approximately 0.59 mile upstream of Maypole Road	•88
Moll Dyers:	
Approximately 0.46 mile downstream of State Route 244	•6
Approximately 0.64 mile upstream of State Route 5	•55
Nelson Run:	
Approximately 520 feet upstream of confluence with McIntosh Run	•10
Approximately 2.1 miles upstream of confluence with McIntosh Run	•63
Nelson's Run	
At confluence with Chaptico Creek	•6
Approximately 1.39 miles upstream of confluence with Chaptico Creek	•47
Pembrook Run:	
At confluence with Eastern Branch	•19
Approximately 1.55 miles upstream of confluence with Eastern Branch	•55
Persimmon Creek:	
Approximately 0.41 mile downstream of New Market Turner Road	•7
Approximately 0.4 mile upstream of confluence of Persimmon Creek Tributary 1	•54
Persimmon Creek Tributary 1:	
At confluence with Persimmon Creek	•18
Approximately 0.96 mile upstream of confluence with Persimmon Creek	•35
Pine Hill Run:	
Approximately 0.22 mile upstream of confluence with Chesapeake Bay	•5
Approximately 0.88 mile upstream of confluence with Chesapeake Bay	•8
Poplar Hill Creek:	
Approximately 500 feet downstream of Tower Hill Road	•7
Approximately 1.0 mile upstream of Medleys Creek Road	•37
Rich Neck Creek:	
At confluence with Burnt Mill Creek	•42
Approximately 1.47 miles upstream of confluence with Burnt Mill Creek	•71
Saint Clements Creek:	
Approximately 350 feet upstream of confluence of Dynard Run	•6
Approximately 1.3 miles upstream of confluence of St. Clements Creek Tributary 1	•82
Saint Clements Creek Tributary 1:	
At confluence with St. Clements Creek	•60
Approximately 2.3 miles upstream of confluence with St. Clements Creek	•85
Saint Clements Creek Tributary 2:	
At confluence with St. Clements Creek	•27
Approximately 0.84 mile upstream of confluence with St. Clements Creek	•46
St. Inigoes Creek:	
Approximately 80 feet upstream of State Route 5	•6
Approximately 0.49 mile upstream of State Route 5	•14
St. Mary's River:	
Approximately 950 feet upstream of confluence with Jarboesville Run	•29
Approximately 0.98 mile upstream of State Route 4	•95
St. Mary's River Tributary 1:	
At confluence with St. Mary's River	•51
Approximately 1.22 miles upstream of confluence with St. Mary's River	•70
St. Mary's River Tributary 2:	
At confluence with St. Mary's River Tributary 1	•53
Approximately 0.26 mile upstream of confluence with St. Mary's River Tributary 1	•70
St. Mary's River Tributary 3:	
At confluence with St. Mary's River Tributary 1	•65
Approximately 0.27 mile upstream of confluence with St. Mary's River Tributary 1	•71
St. Thomas Creek:	
Approximately 1.1 miles upstream of confluence with Patuxent River	•5
Approximately 1.5 miles upstream of confluence with Patuxent River	•9
Tom Swamp Run:	
At confluence with Rich Neck Creek	•45
Approximately 2.35 miles upstream of confluence with Rich Neck Creek	•85
Tomakokin Creek:	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 0.32 mile downstream of SR 470	•6
Approximately 0.5 mile upstream of Bushwood Road	•52
Town Run:	
At confluence with Brenton Bay	•5
Approximately 1.8 miles upstream of Leonardtown Point Lookout Road	•79
Town of Leonardtown	
Unnamed Creek 1:	
At confluence with Indian Creek	•6
Approximately 2.3 miles upstream of confluence with Indian Creek	•64
Unnamed Creek 2:	
Approximately 0.58 mile upstream of confluence with Patuxent River	•7
Approximately 1.57 miles upstream of confluence with Patuxent River	•22
Unnamed Tributary to St. Clements Bay:	
Approximately 0.35 mile upstream of confluence with St. Clements Bay	•6
Approximately 1.23 miles upstream of confluence with St. Clements Bay	•32
Warehouse Run:	
Approximately 600 feet downstream of Flat Iron Road	•8
Approximately 0.60 mile upstream of Flat Iron Road	•28
Western Branch:	
Approximately 970 feet upstream of confluence with St. Mary's River	•25
Approximately 2.27 miles upstream of confluence of Western Branch Tributary 3	•94
Western Branch Tributary 1:	
At the confluence with Western Branch	•58
Approximately 1.1 miles upstream of confluence with Western Branch	•68
Western Branch Tributary 2:	
At the confluence with Western Branch	•70
Approximately 0.49 mile upstream of confluence with Western Branch	•70
Western Branch Tributary 3:	
At the confluence with Western Branch	•71
Approximately 0.37 mile upstream of the confluence with Western Branch	•71
White Neck Creek Tributary:	
Approximately 1,000 feet downstream of Jack Gibson Road	•6
At Colton Point Road	•12
St. Mary's County (Unincorporated Areas)	
Maps available for inspection at the St. Mary's County Office of Land Use and Growth Management, 23150 Leonard Hall Drive, Leonardtown, Maryland.	
Town of Leonardtown	
Maps available for inspection at the Leonardtown Town Hall, 41675 Park Avenue, Leonardtown, Maryland.	
NORTH CAROLINA	
Nash County (Unincorporated Areas) (FEMA Docket No. D7562)	
Beech Branch:	
At the upstream side of the railroad	•96
Approximately 250 feet downstream of Red Oak Battleboro Road	•111
City of Rocky Mount	
Compass Creek:	
At the upstream side of the railroad	•85
Approximately 350 feet upstream of Red Oak Battleboro Road	•139
Goose Branch:	
At the confluence with Tar River	•85
Approximately 250 feet downstream of Country Club Road	•97
Hornbeam Branch:	
At the upstream side of the railroad	•85
Approximately 450 feet upstream of Peele Road	•104
Maple Creek:	
At the confluence with Tar River	•101
Approximately 0.7 mile downstream of Bethlehem Road	•107
Stony Creek:	
At the confluence with Tar River	•97
At the confluence with Big Peachtree Creek	•182
Town of Nashville, Town of Dortches, Town of Red Oak	
Tar River:	
At the downstream side of Leggett Road	•71
At the Franklin County boundary	•170
Big Peachtree Creek:	
At the confluence with Stony Creek	•182
At the NashFranklin County boundary	•204
Fishing Creek:	
Approximately 50 feet downstream of Ward Road	•129
At the NashWarren County boundary	•165
Grape Branch:	
At the confluence with Tar River	•107
Approximately 1,200 feet upstream of Redman Road	•135
Jacobs Branch:	
Approximately 400 feet upstream of the confluence with Tar River	•135
Approximately 1.0 mile upstream of Gandy Road	•152
Pig Basket Creek:	
At the confluence with Stony Creek	•127
Approximately 0.4 mile upstream of Taylors Store Road	•156
Town of Red Oak	
Polecat Branch:	
Approximately 550 feet upstream of the confluence with Maple Creek	•111
Approximately 0.4 mile upstream of the confluence of Unnamed Tributary to Polecat Branch	•120
Unnamed Tributary to Polecat Branch:	
At the confluence with Polecat Branch	•115
Approximately 250 feet downstream of Allison Lane	•140
Red Bud Creek:	
At the confluence with Sandy Creek	•172
At the Nash-Franklin County boundary	•194
Sandy Creek:	
At the confluence with Swift Creek	•155
At the Nash-Franklin County boundary	•183
Swift Creek:	
At Red Oak Road	•130
Approximately 0.4 mile upstream of the confluence of Sandy Creek	•158
Stony Creek Tributary:	
At the confluence with Stony Creek	•123
Approximately 1.2 miles upstream of I-95	•155
Town of Dortches	
Little Creek (Basin 11, Stream 2):	
At the confluence with Moccasin Creek	•208
Approximately 300 feet upstream of the confluence with Moccasin Creek	•208
Press Prong:	
At the confluence with Turkey Creek	•223
At the confluence of Press Prong Tributary	•231
Press Prong Tributary 1:	
At the confluence with Press Prong	•231
Approximately 1,250 feet upstream of Wiley Road	•241
Turkey Creek:	
Approximately 1.1 miles downstream of U.S. 264	•168
Approximately 2,100 feet upstream of Burgess Road	•255
Turkey Creek Tributary 1:	
Approximately 100 feet upstream of Burgess Road	•253
Approximately 840 feet upstream of Burgess Road	•253

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Moccasin Creek:	
Approximately 0.9 mile downstream of N.C. 231	•158
Approximately 0.6 mile upstream of Interstate 264	•220
Town of Dortches	
Maps available for inspection at the Dortches Town Hall, 3057 Town Hall Road, Rocky Mount, North Carolina.	
Nash County (Unincorporated Areas)	
Maps available for inspection at the Nash County Planning Department, West Washington Street, Suite 2110, Nashville, North Carolina.	
Town of Nashville	
Maps available for inspection at the Nashville Town Hall, 200 West Washington Street, Nashville, North Carolina.	
Town of Red Oak	
Maps available for inspection at the Red Oak Town Hall, 8406 Red Oak Boulevard, Nashville, North Carolina.	
City of Rocky Mount	
Maps available for inspection at the City of Rocky Mount Planning Department, One Government Plaza, Rocky Mount, North Carolina.	
NORTH CAROLINA	
Perquimans County (Unincorporated Areas) (FEMA Docket No. D–7578)	
Bethel Creek:	
At Burnt Mill Road	•6
Approximately 1.0 mile upstream of U.S. Highway 13	•11
Burnt Mill Creek:	
At the upstream side of Burnt Mill Road	•6
Approximately 1,000 feet upstream of U.S. Highway 17	•13
Burnt Mill Creek Tributary 1:	
At the confluence with Burnt Mill Creek	•6
Approximately 0.6 mile upstream of U.S. Highway 17	•13
Burnt Mill Creek Tributary 1A:	
At confluence with Burnt Mill Creek Tributary 1	•6
Approximately 0.7 mile upstream of U.S. Highway 17	•17
Goodwin Mill Creek:	
At Beach Springs Road	•6
Approximately 0.4 mile upstream of North Bear Swamp Road	•15
Goodwin Mill Creek Tributary 1:	
At Goodwin Mill Road	•6
Approximately 0.5 mile upstream of Goodwin Mill Road	•12
Goodwin Mill Creek Tributary 2:	
At confluence with Goodwin Mill Creek	•12
Approximately 1.5 miles upstream of Center Hill Highway	•15
Little River:	
Approximately 1.5 miles upstream of U.S. Highway 17	•9
Approximately 600 feet downstream of Sandy Road	•10
Mill Creek:	
Approximately 400 feet downstream of Lake Road	•7
Approximately 0.3 mile downstream of Four Mile Desert Road	•11
Town of Winfall	
Mill Creek Tributary 1:	
At the confluence with Mill Creek	•9
Approximately 0.9 mile upstream of Swing Gate Road	•12
Mill Creek Tributary 2:	
At the confluence with Mill Creek	•10
Approximately 0.9 mile upstream of Swing Gate Road	•14
Perquimans River:	
Approximately 2.6 miles downstream of Gates County boundary	•11
Approximately 150 feet downstream of Gates County boundary	•11
Perquimans River Tributary 2:	
Approximately 0.3 mile upstream of the confluence with Perquimans River	•6
Approximately 425 feet upstream of Layden Road	•10
Town of Hertford	
Sutton Creek:	
Approximately 1,000 feet downstream of the confluence with Sutton Creek Tributary 3	•6
Approximately 1,000 feet upstream of U.S. Highway 17	•13
Sutton Creek Tributary 3:	
At the confluence with Sutton Creek	•6
Approximately 1,300 feet upstream of U.S. Highway 17	•13
Sutton Creek Tributary 4:	
At the confluence with Sutton Creek	•6
Approximately 2.2 miles upstream of the confluence with Sutton Creek	•12
Sutton Creek Tributary 5:	
At the confluence with Sutton Creek	•7
Approximately 600 feet downstream of U.S. Highway 17	•10
Sutton Creek Tributary 6:	
At the confluence with Sutton Creek	•8
Approximately 0.7 mile upstream of U.S. Highway 17	•11
Sutton Creek Tributary 7:	
At the confluence with Sutton Creek	•8
Approximately 1.1 miles upstream of the confluence with Sutton Creek	•12
Town of Hertford	
Maps available for inspection at the Hertford Town Hall, 114 West Grubb Street, Hertford, North Carolina.	
Perquimans County (Unincorporated Areas)	
Maps available for inspection at the Perquimans County Courthouse, 110 North Church Street, Hertford, North Carolina.	
Town of Winfall	
Maps available for inspection at the Winfall Town Hall, 100 Park View Lane, Winfall, North Carolina.	
NORTH CAROLINA	
Wilson County (Unincorporated Areas) (FEMA Docket No. D–7568)	
Contentnea Creek:	
At the confluence of Hominy Swamp	•79
Approximately 0.6 mile upstream of Highway 581	•137
City of Wilson	
Hominy Swamp:	
At the confluence with Contentnea Creek	•79
Approximately 550 feet upstream of Airport Drive	•149
Little Hominy Swamp:	
At the confluence with Hominy Swamp	•113
Approximately 450 feet upstream of George Dew Road	•145
Little Hominy Swamp Tributary 1:	
Approximately 80 feet upstream of the confluence with Little Hominy Swamp	•127
Approximately 0.4 mile upstream of Stedman Drive	•147
Aycock Swamp:	
At the confluence with Black Creek	•71
At the Wilson/Wayne County boundary	•76
Black Creek:	
Approximately 0.8 mile upstream of the confluence with Contentnea Creek	•69
Approximately 1,000 feet upstream of the confluence of Robin Swamp	•131
Towns of Black Creek and Lucama	
Bloomery Swamp Tributary 1:	
Approximately 250 feet upstream of the confluence with Bloomery Swamp	•102
Approximately 0.5 mile upstream of Wilson Chistain Road	•134
Bloomery Swamp Tributary 2:	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Approximately 850 feet upstream of the confluence with Bloomery Swamp	•103
Approximately 1.6 miles upstream of the confluence with Bloomery Swamp	•130
City of Wilson	
Bloomery Swamp Tributary 3:	
Approximately 500 feet upstream of the confluence with Bloomery Swamp	•125
Approximately 0.3 mile upstream of Packhouse Road	•151
Goss Swamp:	
Approximately 1,300 feet upstream of the railroad	•62
Approximately 1,900 feet upstream of the confluence of Goss Swamp Tributary	•83
Town of Stantonsburg	
Goss Swamp Tributary:	
At the confluence with Goss Swamp	•82
Approximately 0.5 mile upstream of the confluence with Goss Swamp	•88
Great Swamp:	
At the confluence with Black Creek	•81
Approximately 1,800 feet downstream of the confluence of Great Swamp Tributary 1	•98
Great Swamp Tributary 1:	
At the confluence with Great Swamp	•91
At the Wilson/Wayne County boundary	•92
Hominy Swamp Tributary 1:	
At the confluence with Hominy Swamp	•85
Approximately 0.9 mile upstream of Lane Street	•127
City of Wilson	
Hominy Swamp Tributary 2:	
At the confluence with Hominy Swamp	•90
Approximately 100 feet upstream of Stantonsburg Road	•122
Shepard Branch:	
At the confluence with Contentnea Creek	•107
Approximately 3,200 feet upstream of the confluence with Contentnea Creek	•107
Marsh Swamp:	
At the confluence with Contentnea Creek	•123
Approximately 2.0 miles downstream of Rock Ridge Sims Road	•125
Little Swamp:	
At the confluence with Contentnea Creek	•111
Approximately 0.8 mile upstream of the confluence with Contentnea Creek	•114
Bloomery Swamp:	
At the confluence with Contentnea Creek	•102
Approximately 0.8 mile upstream of the confluence with Contentnea Creek	•102
Wiggins Mill Tributary:	
At the confluence with Contentnea Creek	•99
Approximately 0.6 mile upstream of the confluence with Contentnea Creek	•99
Cattail Branch:	
At the confluence with White Swamp	•91
Approximately 0.5 mile upstream of the confluence with White Swamp	•95
Cattail Swamp:	
At the confluence with White Swamp	•82
Approximately 1.4 miles upstream of the confluence of Cattail Swamp Tributary	•103
Cattail Swamp Tributary 1:	
At the confluence with Cattail Swamp	•95
Approximately 1.1 miles upstream of the confluence with Cattail Swamp	•103
Town Creek:	
Approximately 300 feet downstream of the Wilson/Edgecombe County boundary	•73
Approximately 0.4 mile downstream of Sharpe Store Road	•117
Town of Elm City	
Town Creek Tributary 1:	
Approximately 0.2 mile downstream of Langley Road	•99
At the confluence with Town Creek	•78
Town Creek Tributary 2:	
At the confluence with Town Creek	•73
Approximately 0.4 mile upstream of Route 42	•95
White Swamp:	
At the confluence with Town Creek	•80
Approximately 0.5 mile upstream of the confluence of Cattail Branch	•94
White Swamp Tributary:	
At the confluence with White Swamp	•85
Approximately 0.8 mile upstream of the confluence with White Swamp	•90
Black Creek Tributary:	
Approximately 225 feet upstream of the confluence of Tributary to Black Creek Tributary	•104
Approximately 2,085 feet upstream of the confluence of the Tributary to Black Creek Tributary	•107
Town of Lucama	
Toisnot Swamp:	
Approximately 1,000 feet upstream of the railroad	•62
Approximately 550 feet downstream of Wilson/Nash County boundary	•140
City of Wilson, Town of Stantonsburg	
Toisnot Swamp Tributary 2:	
At the confluence with Lake Wilson/Toisnot Swamp	•120
Approximately 400 feet upstream of Ridsen Road	•137
City of Wilson	
Turkey Creek:	
Approximately 100 feet downstream of Narron Road	•152
Approximately 100 feet downstream of the Wilson/Nash County boundary	•155
Turner Swamp:	
At the confluence with Contentnea Creek	•67
At the Wilson/Wayne County boundary	•76
Ward Run:	
At the Wilson/Pitt County boundary	•92
Approximately 1.3 miles upstream of the Wilson/Pitt County boundary	•98
Whiteoak Swamp:	
Approximately 0.5 mile downstream of U.S. Highway 264	•76
Approximately 2.5 miles upstream of Gardners School Road	•97
Juniper Creek:	
Approximately 1,200 feet upstream of the confluence of Bloomery Swamp	•157
Approximately 1,500 feet upstream of Green Pond Road	•183
Lee Swamp:	
At the confluence with Black Creek	•106
Approximately 0.4 mile upstream of Highway 301	•119
Town of Lucama	
Little Contentnea Creek:	
At the Wilson/Greene County boundary	•87
Approximately 1.2 miles upstream of Eagles Cross Road	•91
Mill Branch:	
At the confluence with White Oak Swamp	•83
Approximately 1.5 miles upstream of the confluence with White Oak Swamp	•96
Millstone Creek:	
Approximately 500 feet upstream of Countryside Road	•159
Approximately 1,000 feet upstream of railroad	•195
City of Wilson, Town of Sims	
Moccasin Creek:	
Approximately 0.6 mile upstream of Highway 581	•137
At the Wilson/Nash/Johnston County boundary	•158
Robin Swamp:	
At the confluence with Black Creek	•129
Approximately 0.4 mile upstream of Newsome Mill Road	•139
Town of Black Creek	

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Maps available for inspection at the Town of Black Creek Zoning Administration, 112 West Center Street, Black Creek, North Carolina.	
Town of Elm City	
Maps available for inspection at the Elm City Town Hall, 117 South Railroad Street, Elm City, North Carolina.	
Town of Lucama	
Maps available for inspection at the Lucama Town Clerk's Office, 111 South Main Street, Lucama, North Carolina.	
Town of Sims	
Maps available for inspection at the Sims Town Hall, 6402 U.S. 264A, Sims, North Carolina.	
Town of Stantonsburg	
Maps available for inspection at the Stantonsburg Town Hall, 108 East Commercial Avenue, Stantonsburg, North Carolina.	
City of Wilson	
Maps available for inspection at the Wilson Development Services Department, 112 North Goldsboro Street, Wilson, North Carolina.	
Wilson County Unincorporated Areas	
Maps available for inspection at the Wilson County Mapping Department, 101 North Goldsboro, Wilson, North Carolina.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 26, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–12374 Filed 6–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic and Safety Administration

49 CFR Part 571

Docket No. NHTSA–04–17972

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Correcting amendment.

SUMMARY: This rule corrects an inconsistency between the telltale requirements for air bag suppression systems and air bag on-off switches required under Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection* and 49 CFR part 595 Subpart B, *Retrofit on-off switches for air bags*. This document resolves the problem by permitting manufacturers of vehicles equipped with air bag on-off switches and manufacturers of retrofit air bag on-off switches to use the abbreviation ''pass'' in lieu of ''passenger'' on the telltales.

DATES: This final rule is effective June 2, 2004.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lou Molino, Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS–112. Telephone: (202) 366–2264. Fax: (202) 493–2739. For legal issues, you may contact Rebecca MacPherson, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On May 12, 2000, NHTSA published a final rule phasing in new, advanced air bag requirements designed to minimize the risk of air bag injury while maintaining their benefits. 65 FR 30680. These requirements are part of FMVSS No. 208. As part of the final rule, the agency requires manufacturers employing suppression technologies to equip their vehicles with a telltale indicator that illuminates when the passenger air bag is automatically suppressed. Among other requirements, the final rule specified that the telltale must have the identifying words ''PASSENGER AIR BAG OFF'' on the telltale or within 25 mm thereof. This requirement was based on a preexisting requirement for vehicles equipped with air bag on-off switches contained in FMVSS No. 208 and for retrofit air bag on-off switches in 49 CFR Part 595.

On December 18, 2001, the agency responded to various petitions for reconsideration of the May 2000 final rule by issuing a new final rule making several amendments to the advanced air bag requirements. Among those amendments was a slight relaxation of the telltale wording requirement. Specifically, the December 2001 rule permitted manufacturers to use either ''PASSENGER AIR BAG OFF'' or ''PASS AIR BAG OFF'' on or within 25 mm of the suppression telltale. However, no corresponding conforming change was made to either the manual air bag on-off switch requirement of FMVSS No. 208 or to its corollary in 49 CFR Part 595.

In permitting the abbreviation for the word ''passenger,'' the agency stated, ''[w]e have decided to allow manufacturers to abbreviate ''passenger'' to ''pass,'' since we do not believe the abbreviation will be confusing when combined with the rest of the required text. Allowing ''pass'' will also allow manufacturers to meet both the U.S. and Canadian requirements.'' 66 FR 65376, 65400.

As this same rationale applies to the telltales for manual air bag on-off switches, the same changes in the regulatory text for those requirements should have been made at the same time as the change affecting suppression telltales was made. Today's rule makes that correction.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFTEY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 40 CFR 1.50.

■ 2. Section 571.208 is amended by revising S4.5.4.3(b) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.4.3 * * *

(b) Shall have the identifying words ''PASSENGER AIR BAG OFF'' or ''PASS AIR BAG OFF'' on the telltale or within 25 millimeters of the telltale;

* * * * *

■ 3. Section 595.5 is amended by revising (b)(3)(ii)(B) to read as follows:

§ 595.5 Requirements.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) Shall have the identifying words ''DRIVER AIR BAG OFF'', ''PASSENGER AIR BAG OFF'', or ''PASS AIR BAG OFF'', as appropriate, on the telltale or within 25 millimeters of the telltale;

* * * * *

Issued on May 26, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–12333 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.040412113–4152–01; I.D. 040104C]

RIN 0648–AS02

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the turtle excluder device (TED) regulations that require most shrimp trawlers to use TEDs in the southeastern Atlantic and the Gulf of Mexico to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS is allowing the use of a double cover flap TED with a modified flap design. This modification will allow the use of a flap that extends up to 24 inches (61 cm) past the posterior edge of the TED frame. This modification has been tested and meets the regulatory requirements for efficiency at releasing sea turtles.

DATES: Effective May 27, 2004.

ADDRESSES: Copies of the environmental assessment can be obtained from the Protected Resources Division, Southeast Regional Office, 9721 Executive Center Drive, North, Suite 102 St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail *Robert.Hoffman@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206, or if in accordance with the terms and conditions of a biological opinion issued under section 7 of the ESA or an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the take prohibition if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207(a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

February 21, 2003, Amendments to the Sea Turtle Conservation Regulations

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The February 2003 final rule requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic area and Gulf area) and the inshore waters of Georgia and South Carolina use either a specified double cover flap TED, a single-grid hard TED with a 71–inch (180–cm) opening, or a Parker soft TED with a 96–inch (244–cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44–inch (112–cm) opening, a Parker soft TED with a 56–inch (142–cm) opening, and a hooped hard TED with a 35–inch (89–cm) by 27–inch (69–cm) escape opening.

Since publication of the final rule, fishermen have reported that the current double cover flap TED design stretches over time. This stretching causes a gap between the flap panels and the grid frame. Fishermen report that this stretching causes loss of shrimp catch. While this loss is unsubstantiated and unquantified, fishermen sought the ability to modify the double cover flap TED design to allow longer flap panels and longer edge lines. Fishermen have concluded that this modification allows retention of shrimp catch.

Accordingly, since September 2003, NMFS has issued 230 experimental permits, in accordance with § 223.207(e)(2), to fishermen to test a modified double cover flap TED with longer flap panels. This modification to the double cover flap TED was designed by NMFS gear technicians in cooperation with industry. The modification incorporates the use of flap panels that extend 24 inches (61 cm) past the posterior edge of the TED frame and are sewn down the entire length of the outside edge of each flap panel. The current double cover flap TED design only allows the flap panels to extend 6 inches (15 cm) past the posterior edge of the TED frame. Interviews with permitted fishermen have indicated that the new design works well in retaining shrimp catch.

Long Flap Paneled Double Cover Flap TED Testing

NMFS tested the modified double cover flap TED using testing protocols designed to evaluate a TED's ability to release large turtles. The protocols were developed during the testing and approval of the double cover flap TED (66 FR 24287, May 14, 2001). NMFS used the average carapace measurements of 15 nesting female leatherback turtles to construct a pipe-framed model of a leatherback turtle. This model measured 40 inches wide by 21 inches (102 cm by 53 cm) deep. The test was performed by a diver swimming repeatedly through the trawl with the model and pushing it through the TED opening. During these tests, the diver was able to push the model through the opening with ease. When the model was inverted (simulating the dorsal surface of the turtle oriented against the TED frame), the diver was still able to push

the model through the opening with ease.

The long flap double cover flap TED was also tested for its ability to release wild turtles of a range of sizes using a modified version of the Cape Canaveral testing protocol published in the **Federal Register** on October 9, 1990, (55 FR 41092). The 1990 protocol called for the use of a series of double rigged tows, in an area with a high sea turtle concentration (such as the Cape Canaveral Shipping Channel), in which one trawl is a naked net (no TED) and the other includes the experimental TED. The catch of turtles in the naked net is compared to the captures in the net with the TED installed to determine if the TED was at least 97 percent effective at releasing turtles as required by § 223.207(e)(1). NMFS has modified this protocol to better protect turtles and to increase its accuracy. The modifications include the use of two trawls, each rigged with the experimental TED and a video camera mounted by the TED escape opening that can be monitored on board the research vessel. Once the NMFS technician on board the research vessel sees a turtle encounter the TED, the turtle is given 10 minutes to escape. If the turtle does not escape within 10 minutes, the trawl is retrieved and the turtle is released. Any turtle that does not escape within 10 minutes is considered to have been captured.

Using this modified Cape Canaveral protocol, NMFS tested the modified double cover flap TED off the coast of Georgia between November 13 and November 18, 2003, and in the Cape Canaveral Channel between February 19 through March 12, 2004. In total, 33 turtles were exposed to this TED with 32 of the turtles escaping within the 10–minute exposure period for a 97–percent success rate. The turtles exposed to the modified double cover flap TED included one leatherback, seven Kemp's ridleys, and 25 loggerheads. The single turtle that did not escape within the 10–minute limit was a juvenile loggerhead.

Therefore, on April 16, 2004, NMFS published a proposed rule (69 FR 20571) requesting comments on allowing the use of a long flap double cover flap TED in the Atlantic and Gulf of Mexico. No responsive comments were received on the proposed rule.

Provisions of the Final Rule

This final rule will allow the use of a double cover flap TED with flap panels that extend between 6 inches (15 cm) but no more than 24 inches (61 cm) past the posterior edge of the grid with the use of edge lines in all areas and at all times where and when TEDs are required. This final rule will only modify the existing requirements for the double cover flap TED in a permissive manner, i.e., fishermen may now use longer flaps and edge lines on double cover flap TEDs, but if they choose not to make this modification, they are not required to change existing gear.

Specifically, this final rule allows a single-grid hard TED with the escape opening cut of at least 56 inches (142 cm) wide and 20 inches (51 cm) forward and aft, covered with a split flap composed of two equal size rectangular panels. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The edge of the panels may extend no more than 24 inches (61 cm) past the posterior edge of grid, and may be sewn down the entire length of the outside edge of each flap panel. To better preserve the shape of the webbing panels over time, edge lines can be used around the edges of the unattached portion of the flap panels to help maintain the shape of the flap. Edge lines can only be used if the flap panels are sewn down the entire length of the outside edge of each flap panel.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an environmental assessment/Regulatory Flexibility Act analysis/regulatory impact review (EA/RFA/RIR) for this final rule that evaluates the potential impact on the environment that may result from the final rule. The EA/RFA/RIR found that the implementation of this rule will not have a significant impact on the quality of the human environment and that the preparation of an environmental impact statement is not necessary.

The final rule is not expected to result in any direct adverse economic impacts on small entities. However, an RFA was conducted. Based on a compilation of data from the shrimp landings file for the Gulf, Florida trip ticket data, and data from the Georgia shrimp landings system, the maximum known gross revenue for an individual fishing craft in the Gulf and South Atlantic shrimp fisheries in 1999 was approximately $724,000 in nominal dollars. While this figure could be an underestimate of the true maximum value since currently available data does not allow all shrimp landings from different parts of the region and their associated revenues to be linked to a particular fishing craft, this figure is sufficiently less than $3.5 million, supporting the presumption that all firms in the Gulf and South Atlantic shrimp trawl fisheries are small business entities.

It is estimated that 11,244 small vessels (vessels less than or equal to 60 ft (18.3 m)) and 2,368 large vessels (vessels greater than 60 ft (18.3 m)), or a total of 13,572 vessels, operate in the Southeast shrimp fishery. Among these vessels, approximately 2,600 vessels are currently permitted to operate in the Gulf of Mexico EEZ commercial shrimp trawl fishery. Small vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 4,752 pounds of shrimp valued at $12,435 in gross revenues, requiring average variable cost expenditures of $8,708 and generating a profit of $3,727. Large vessels in the Southeast shrimp trawl fishery are estimated to harvest an average of 42,656 pounds of shrimp valued at $142,880 in gross revenues, requiring average variable cost expenditures of $126,089 and generating a profit of $16,089. All participants in the trawl fishery would be affected by the proposed action in that each would have the opportunity to utilize proposed gear modification. However, the preferred alternative does not impose a requirement to use the longer flaps, nor would the use of double-cover TEDs rather than other certified TED designs be required. The final rule, therefore, creates options without additional obligations. Use of the modified TED will require no special skills other than those currently necessary to operate in the fishery. No duplicative, overlapping, or conflicting federal rules have been identified. All business entities participating in the commercial shrimp fisheries are considered small entities, so the issue of disproportionality does not arise. The final rule will not impose any additional fishing restrictions on participants in the fishery. The final rule would simply allow greater flexibility to select the gear configuration that best suits the operational conditions of the individual shrimping operation. Thus, current operational behaviors, including when to shrimp, where to shrimp, and how long to shrimp, as well as where product is marketed, can continue unchanged. Minor costs (approximately $2.00 per vessel) associated with additional netting necessary to extend the flaps may be incurred. However, these costs should not impact profitability and, in fact, would only be incurred should the operator determine that the current flap dimensions result in excessive shrimp loss, such that modification would result in a net

financial gain. Thus, no reduction in profits are expected for any small entities.

Adoption of the no action alternative (not allowing the use of the long flap double cover flap TED) would result in the fishermen's continued reports, but unsubstantiated and unquantified, loss of shrimp resulting from flap stretching over time as the double-cover TEDs are used. Thus, adoption of this no-action alternative will result in the continuation of an unanticipated adverse consequence of the original TED specifications. Although the amount of current shrimp loss as a result of this problem, and the subsequent impacts on revenues and profitability, are unknown, any perceived unnecessary adverse impacts on the economic performance of participants in the fishery further erodes the viability of continued participation, jeopardizing both the shrimping businesses themselves as well as associated industries.

A copy of the EA/RFA/RIR is available from NMFS (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, (AA) waives the 30–day delay in effectiveness of this final rule because this rule relieves an existing restriction, and for other good cause. Under the existing TED regulations fishermen can choose to use a single grid hard TED with a 44–inch opening (112- cm)(inshore only), a 71–inch (180–cm) opening, or a double cover flap with a 6–inch (15.3–cm) flap, or they can use the inshore or offshore hooped hard TEDs or the Parker soft TED. Until this final rule becomes effective, long flap double cover flap TED use would not be legal in the southeast shrimp trawl fishery. This rule relieves this restriction for all fishermen in the southeast shrimp trawl fishery. In addition, there are 230 fishermen who have permits to use the long flap double cover flap TED, these permits expire on May 31, 2004. Responses from these fishermen indicate that shrimp loss is low with this TED and they would like to continue to use it. Accordingly, if the effectiveness of this rule is delayed, these permits will expire and the fishermen who are currently using this TED and plan to continue using it will be forced either to abstain from fishing until the rule becomes effective, or else modify their TEDs to meet the current requirements and then modify them back when the rule becomes effective a short time later. Waiver of the 30 day delay in effectiveness will save the fishermen the time and expense of making this change for a limited time only. Therefore, the AA waives the 30 day delay in effectiveness for this final rule.

The Endangered Species Act provides the statutory basis for this proposed rule.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: May 26, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. In § 223.207, paragraph (d)(3)(iii) is revised to read as follows:

§ 223.207 Approved TEDs.

* * * * *

(d) * * *

(3) * * *

(iii) *Double cover flap offshore TED flap.* This flap must be composed of two equal size rectangular panels of webbing. Each panel must be no less than 58 inches (147 cm) wide and may overlap each other no more than 15 inches (38 cm). The panels may only be sewn together along the leading edge of the cut. The trailing edge of each panel must not extend more than 24 inches (61 cm) past the posterior edge of the grid (Figure 16 to this part). Each panel may be sewn down the entire length of the outside edge of each panel. Chafing webbing described in paragraph (d)(4) of this section may not be used with this type of flap.

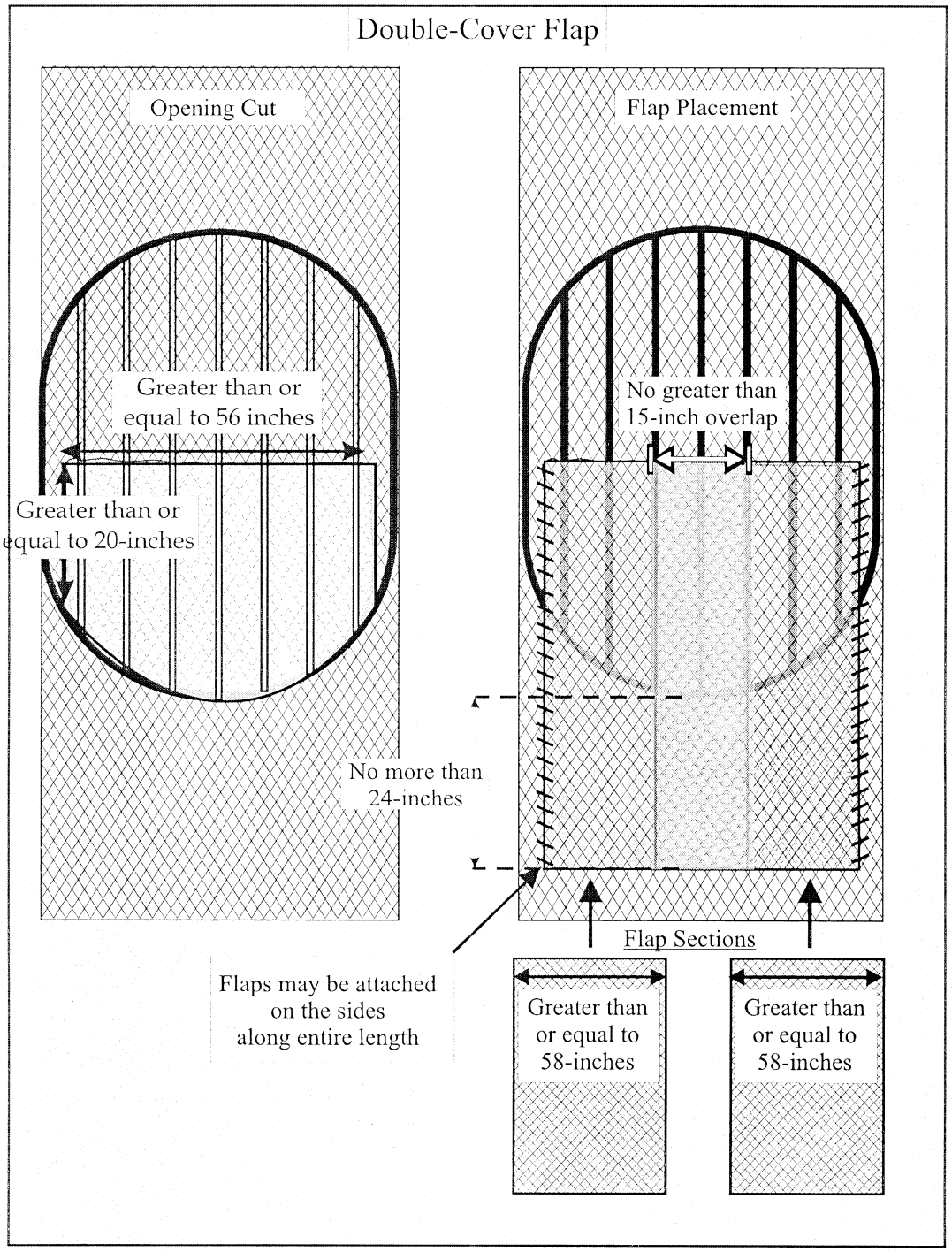
(A) *Edge lines.* Optional edge lines can be used in conjunction with this flap. The line must be made of polyethylene with a maximum diameter of 3/8 inches (.95 cm). A single length of line must be used for each flap panel. The line must be sewn evenly to the unattached, inside edges and trailing edges, of each flap panel. When edge lines are installed, the outside edge of each flap panel must be attached along the entire length of the flap panel.

(B) Reserved

■ 3. In part 223, Figure 16 is revised to read as follows:

BILLING CODE 3510–22–S

FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED



[FR Doc. 04–12433 Filed 6–1–04; 4:15 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 69, No. 106
Wednesday, June 2, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY–03–005]

RIN 0581–AC33

Voluntary Shell Egg Grading Regulations—Facilities and Equipment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary shell egg grading program. The proposed revisions would add definitions that describe the official identification and packaging of shell eggs; provide that grading services may be requested or reported by electronic means; clarify the number of samples required for an appeal grading when the original samples are not available; require that plants provide two candling lights in an acceptable candling booth for grade determination; provide an additional method for lot identifying shell eggs; and clarify and update the facility and operating requirements of plants utilizing the voluntary grading service. The proposal would also provide that cooler rooms holding shell eggs identified with a consumer grade shall be capable of maintaining a relative humidity of 70 percent or higher. Interested parties are particularly invited to submit any data or studies regarding the relative humidity requirement. From time to time, sections in the regulations are affected by changes in egg production and processing technology. This rule updates the regulations to reflect these changes.

DATES: Comments must be received on or before August 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0259, room 3944–South, 1400 Independence Avenue, SW., Washington, DC 20250. Comments may be faxed to (202) 690–0941. Comments should be submitted in duplicate. Comments may also be submitted electronically to: *amspydockets@usda.gov* or *www.regulations.gov*. All comments should refer to Docket No. PY–03–005 and note the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above location during regular business hours. Comments received also will be made available over the Internet in the rulemaking section of the AMS Web site *www.ams.usda.gov/rulemaking*. A copy of this proposed rule may be found at: *www.ams.usda.gov/poultry/regulations/rulemakeing/index.htm*.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202)720–3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

Shell egg grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) and is offered on a fee-for-service basis. It is designed to assist in the orderly marketing of shell eggs by providing for the official certification of egg quality, quantity, size, temperature, packaging, and other factors.

Changing technology in egg production and processing requires that the regulations governing shell egg grading be updated. The proposal would update the requirements to bring them in line with the requirements that applicants utilizing official grading services must meet. After a plant makes an application for grading service, an agency representative conducts a plant survey. The survey determines if the plant premises, facility, equipment, and operation procedures can satisfactorily support the official grading of shell eggs. These prerequisite requirements are based on good manufacturing practices typically associated with food processing and have specific application to shell egg processing. Proposed changes included the following:

(1) Definitions. The definitions of ''chief of the grading branch'' and ''national supervisor'' would be revised to reflect the current organizational structure in AMS. New definitions for ''Agricultural Marketing Service or AMS'', ''consumer grades,'' ''packaging,'' ''packing,'' and ''United States Standards, Grades, and Weight Classes for Shell Eggs'' would be added to establish a clear meaning for these terms. (§ 56.1)

(2) Candling Lights. As newer and faster equipment has been developed and installed in official plants, the need for additional facilities and equipment to grade official samples has increased. To provide acceptable space and equipment for two graders to perform official grading activities or have space available for a supervisor to conduct supervisory visits without disrupting the grading activities of the official grader, this rule would revise the candling light requirement from one to two and would require a candling booth of sufficient size to accommodate at least two candling lights for additional graders. (§ 56.17)

(3) Communications. The current regulations specify that service may be requested or reported by telephone or telegraph. Even though these forms of communication may still be used, the revisions would allow alternate forms of electronic communications as are currently available in the market place. (§§ 56.21, 56.58)

(4) Temporary Grading Service. Processors are now able to request temporary grading service which provides them the ability to pack grade-identified shell eggs into officially grademarked cartons without utilizing continuous resident grading service. They must still meet all facility, equipment, and operating requirements specified for plants utilizing continuous grading services. This revision would add temporary grading service as a type of grading service that could be requested by an applicant. The regulations would also be revised by providing that certificates may be issued to an applicant who utilizes temporary grading. (§§ 56.17, 56.56)

(5) Lot Numbering. The current regulations specify that product be lot numbered on either the carton or the consumer package. Processors have requested that they be allowed to lot identify shell eggs by placing the lot number on the individual egg. This revision would update the regulations to

reflect changes in the marketing of shell eggs. (§ 56.37)

(6) Official Identification. The current regulations specify that the official identification of any graded product shall be done only under the supervision of a grader or quality assurance inspector. The revision would clarify that only product which is identified with the grademark shall be officially identified under the supervision of a grader or quality assurance inspector. (§ 56.39)

(7) Types of Grading Services. The types of grading services available to an applicant would be added. There are often questions about each type of available grading service and this revision would provide an explanation of those services. (§ 56.28)

(8) Appeal Gradings. The sample size of an appeal grading when the original samples are not available or have undergone a material change would be double the samples required by § 56.4(b). The current regulations specify that only in the instance where the original samples are not available shall the appeal sample size be double that required by § 56.4(b). It is necessary to increase the sample size to improve the confidence level of results and properly resolve the issue prompting the applicant's appeal. (§ 56.65)

(9) Occupational Safety and Health Regulations. The shell egg industry is subject to Federal, State, and local government occupational safety and health regulations. This proposal would update the regulations to reflect that an applicant utilizing the official grading service must be in compliance with all applicable Federal, State, and local government occupational safety and health regulations. (56.76)

(10) General Premises. General premise requirements would be added. The current regulations do not specify such requirements. In order to grade and pack shell eggs in the most efficient and sanitary manner, shell egg graders and packers must maintain the premises of their facilities in a manner that is not a deterrent to the grading and packing of shell eggs. The revision would specify that the premises of the facility be maintained in an appropriate manner. (§ 56.76)

(11) Structures and Facilities. The current regulations specify that only certain facilities, such as benches, and only certain structures, such as walls, are required to be replaced with materials impervious to moisture when they become subjected to moisture or develop odors. The revision would update the regulations to reflect that all structures and facilities subject to moisture must be readily cleanable, sanitarily maintained, and impervious to moisture and that floors are constructed for proper drainage. (§ 56.76)

(12) Lavatories and Toilets. The current regulations specify that lavatory and toilet accommodations shall be provided with hot and cold running water, ventilation, and hand washing instruction signs. The revisions would also specify that the facilities be located in areas separate and away from the grading and processing rooms. (§ 56.76)

(13) Storage Areas. The current regulations do not specify requirements for storage areas for storing packing and packaging materials to be used for consumer labeled shell eggs. This revision would specify that adequate packing and packaging storage areas be provided and properly maintained in order that packing and packaging are stored in a dry, clean, and sanitary environment. (§ 56.76)

(14) Grading and Packing Rooms. The current regulations that specify grading and packing room requirements should be updated to reflect the current state of technology in egg production and processing. The revision would update the requirements of the grading and packing rooms by specifying their sanitary design and construction. Additionally, the revision would specify that during operations the sanitation of the processing areas and equipment be maintained in a satisfactory manner. (§ 56.76)

(15) Shell Egg Cooler Rooms. The current regulations provide that humidifying equipment capable of maintaining a relative humidity, which will minimize shrinkage, shall be provided. However, they do not specify a percentage of relative humidity that the equipment should provide. The revision would specify that the regulations provide that the cooler rooms which will hold consumer labeled shell eggs shall be capable of maintaining a relative humidity of 70 percent or higher and that appropriate equipment be provided to measure relative humidity. (§ 56.76)

(16) Shell Egg Protecting Operations. The current regulations that specify shell egg protecting operation requirements should be updated to reflect the current state of technology in egg production and processing. The revision would update the regulations by specifying that the requirements for shell egg protecting equipment include its sanitary design, maintenance, and operation. The revision would also eliminate the requirement that previously used contaminated oil be heat treated prior to its reuse. This is an obsolete process that is not used and should be removed from the regulations. (§ 56.76)

(17) Shell Egg Washing. The current regulations specify that shell egg cleaning equipment shall be maintained and properly cleaned. These regulations should be updated to reflect the changing technology in egg production and processing. The revision would specify that shell egg washing equipment be sanitarily designed and maintained in a clean and sanitary manner. The revision would also specify that shell egg drying equipment be sanitarily designed and maintained, that air used for drying must be filtered, and that filters are to be cleaned and maintained. (§ 56.76)

(18) Shell Egg Wash Water. The current regulations specify the temperatures of shell egg wash water, but do not specify that an accurate thermometer is to be provided to monitor the required wash water temperature. The revision would clarify that the plant would be responsible for providing an accurate thermometer to measure the temperature of the wash water. (§ 56.76)

(19) Spray Rinse Sanitizer. The current regulations specify that shell eggs be spray rinsed with water containing an approved sanitizer of not less than 50 p/m nor more than 200 p/m of available chlorine. The revision would revise the regulations to reflect that the spray rinse contains a sanitizer approved by the national supervisor of not less than 100 p/m nor more than 200 p/m of available chlorine or its equivalent. With the development of newer and faster processing equipment, the speed at which shell eggs are processed has increased. Correspondingly, this increase in speed has resulted in shell eggs being spray rinsed with an approved sanitizer for a shorter period of time, reducing the overall effectiveness of the sanitizing spray rinse. However, when the minimum amount of sanitizer used to spray rinse shell eggs is increased, the loss in effectiveness caused by the increased speed of the processing equipment is reduced. The revision would update the regulations to reflect that shell eggs receive an increased exposure to an approved sanitizer. (§ 56.76)

(20) Shell Egg Washing. The current regulations specify that shell eggs be removed from washing equipment during any rest period. The revision would reflect that shell eggs be removed from the processing equipment during any non-processing periods to prevent loss of egg quality from extended exposure to elevated temperatures. (§ 56.76)

(21) Removal of Washing Operation Steam and Vapors. The current regulations specify that steam and vapors from the washing operation be continuously and directly removed from the building. The revision would specify that steam, vapors, or odors originating from washing and rinsing operations shall be exhausted to the outside of the building to prevent the development of an undesirable environment in the shell egg processing room. (§ 56.76)

(22) Shell Egg Packing. The current regulations that specify the packing requirements for eggs that are to be identified with a grademark should be updated to reflect the type of packing and packaging materials used by shell egg processors. When the regulations were promulgated most all packing materials were constructed of fiber materials. Today many other materials, such as plastic and metal, are used in the construction of packing materials. The revision would add that eggs that are to be identified with a grademark may be packed in other than fiber packing materials. (§ 56.76)

(23) Approval of Chemicals and Compounds. The current regulations specifying the requirements for the use of approved chemicals and compounds should be updated. The regulations would be updated to reflect that the national supervisor, Poultry Programs is responsible for determining acceptance of the intended use of chemicals and compounds for their specified use. Shell egg processing facilities will still be responsible for using chemicals and compounds in accordance with the manufacturer's instructions. (§ 56.76)

Executive Order 12866 and Effect on Small Entities

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of the rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA)(13 CFR 121.201) defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 625,000 egg laying hens are needed to produce enough eggs to gross $9,000,000.

Currently, the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 1621 *et seq.*) authorizes a voluntary grading program for shell eggs. Shell egg processors that apply for service must pay for the services rendered. So that costs are shared by all users, these user fees are proportional to the volume of shell eggs graded. Shell egg processors are entitled to pack their eggs in packages bearing the USDA grade shield when AMS graders are present to certify that the eggs meet the grade requirements as labeled. Plants in which these grading services are performed are called official plants. Shell egg processors who do not use USDA's grading service may not use the USDA grademark. There are about 558 shell egg processors registered with the Department that have 3,000 or more laying hens. Of these, 161 are official plants that use USDA's grading service and would be subject to this proposed rule. Of these 161 official plants, 38 meet the small business definition.

One proposal would require that plants provide two candling lights in an acceptable candling booth. This change is necessary to provide requested grading service in an acceptable manner with the new equipment and facilities that have been developed and installed in official plants. As new facilities have been built and existing facilities renovated, they have been equipped with at least two candling lights in acceptable candling booths. Currently, all of the plants that utilize the voluntary grading program for shell eggs have at least two acceptable candling lights. Therefore, this proposal would have no adverse economic impact on processors.

One proposal would allow producers to request service by electronic communications. Similarly, another proposal would allow the results of grading to be disseminated by any acceptable means of communications. These proposals provide that processors are able to receive or send communications by the most acceptable and efficient means of communication that the current state of technology allows. These proposals expand the way that producers may communicate. Therefore, these proposals would also have no adverse economic impact on producers.

One proposal would include temporary grading service as a type of grading service that shell egg processors may request. Another proposal would provide that certificates may be issued under temporary grading service. This service is currently being offered to the industry as a method by which shell egg processors can pack eggs into shielded cartons without utilizing official continuous grading service. These proposals would only formalize this type of service. Because the service is already available and being used, they would have no economic impact on processors.

One proposal to establish an alternate method of lot numbering eggs would allow shell egg processors to place a code date on an individual egg. This action will bring the regulations in line with a procedure that is currently approved by the Agency and in use in the market place. This proposal would have no adverse economic impact on processors.

One proposal would clarify and update facility requirements. This proposal would update the regulations by incorporating requirements that a plant must currently meet prior to the start of grading service at a facility. After a plant makes an application for grading service, an Agency representative conducts a plant survey to determine if the plant premises, facility, and equipment can satisfactorily support the official grading of shell eggs. These pre-requisite requirements are based on good manufacturing practices typically associated with food processing and have specific application to shell egg processing. Plants currently utilizing the grading service must maintain their premises, facility, equipment, and operating procedures at a minimum acceptance level. This proposal would only reflect the requirements which facilities are presently meeting and would have no economic impact on processors.

One proposal that updates the facility requirements would require that cooler rooms that hold shell eggs identified with a consumer grademark be capable of maintaining a relative humidity of 70 percent or higher. The regulations currently provide that humidifying equipment capable of maintaining a relative humidity, which will minimize shrinkage, shall be provided. However, the regulations do not specify a percentage of relative humidity that the equipment should provide. A relative humidity of 70% or higher is considered sound and conforms with processing operations presently in use by the shell egg industry.[1] This provides a level of

[1] Stadelman and Cotterill in *Egg Science and Technology,* 4th Edition, 1995, recommend that the relative humidity of egg holding rooms should not drop below 60 percent relative humidity to retard evaporation and prevent a loss in shell egg quality.

Continued

humidity that will maintain the quality of shell eggs. This proposal would have no adverse economic impact on processors.

Other changes to the definitions and editorial-type changes would clarify and update the existing regulations and would have no economic impact on entities using voluntary shell egg grading service.

For the above reasons, the Agency has certified that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements in §§ 56.21(a), 56.21(c), 56.37, 56.56(a), 56.58, 56.76(f)(7), and 56.76(h) to be amended by this rule have been previously approved by OMB and assigned OMB control number 0581–0128 under the Paper Reduction Act of 1995.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 56 be amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 56.1, revise the terms *chief of the grading branch* and *national supervisor* and add, alphabetically, the new terms *Agricultural Marketing Service or AMS, consumer grades, grademark, official standards, officially identified, packaging, packing,* and *United States Standards, Grades, and Weight Classes for Shell Eggs* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Agricultural Marketing Service or *AMS* means the Agricultural Marketing Service of the Department.

* * * * *

Chief of the Grading Branch means the Chief of the Grading Branch, Poultry Programs, AMS.

* * * * *

Consumer grades means U.S. Grade AA, A, and B.

* * * * *

Grademark means the official identification symbol (shield) used to identify eggs officially graded according to U.S. consumer grade standards.

* * * * *

National supervisor means (a) the officer in charge of the shell egg grading service of the AMS, and (b) other employees of the Department designated by the national supervisor.

* * * * *

Official standards means the official U.S. standards grades, and weight classes for shell eggs maintained by and available from Poultry Programs, AMS.

Officially identified means eggs that have official marks applied to the product under the authority of the AMS in accordance with the act and its regulations.

* * * * *

Packaging means the primary or immediate container in which eggs are packaged and which serves to protect, preserve, and maintain the condition of the eggs.

Packing means the secondary container in which the primary or immediate container is placed to protect, preserve, and maintain the condition of the eggs during transit or storage.

* * * * *

United States Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) means the official U.S. standards, grades, and weight classes for shell eggs that are maintained by and available from Poultry Programs, AMS.

* * * * *

3. In § 56.9, the table in paragraph (b) is amended by removing the entries for 56.76(e)(6) and 56.76(g) and adding in their place the entries for 56.76(f)(7), 56.76(h), and 56.21(c) to read as follows:

§ 56.9. OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

7 CFR section where identified and described	Current OMB control No.
* * * * *	
56.21(c)	0581–0128
* * * * *	
56.76(f)(7)	0581–0128
56.76(h)	0581–0128

4. Section 56.17 is amended by revising the introductory text and paragraph (a)(5), and by adding a new paragraph (a)(6) to read as follows:

§ 56.17 Facilities and equipment for graders.

Facilities and equipment to be furnished by the applicant for use of graders in performing service on a resident or temporary basis shall include (when deemed necessary) the following:

(a) * * *

(5) Two candling lights that provide a sufficient combined illumination through both the aperture and downward through the bottom to facilitate accurate interior and exterior quality determinations; and

(6) A candling booth adequately darkened and located in close proximity to the work area that is reasonably free of excessive noise. The booth must be sufficient in size to accommodate two graders, two candling lights, and other necessary grading equipment.

5. Section 56.21 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 56.21 How application for service may be made; conditions of service.

(a) *Noncontinuous grading service on a fee basis.* An application for any noncontinuous grading service on a fee basis may be made in any office of grading, or with any grader at or nearest the place where the service is desired. Such application may be made orally (in person or by telephone), in writing, or by other electronic means.

* * * * *

(c) *Temporary grading service on a fee basis.* An application for grading service on a temporary basis must be made in writing on forms approved by the Administrator and filed with the Administrator. Such forms may be obtained at the national, regional, or State grading office. In making application, the applicant agrees to comply with the terms and conditions

Moreover, Stadelman and Cotterill recommend that eggs be held under a relative humidity of 70 percent to 80 percent.

of the regulations (including, but not limited to, such instructions governing grading of products as may be issued from time to time by the Administrator). No member of or Delegate to Congress or Resident Commissioner shall be admitted to any benefit that may arise from such service unless derived through service rendered a corporation for its general benefit.

6. Section 56.28 is added to read as follows:

§ 56.28 Types of grading service.

(a) *Noncontinuous grading service.* This type of service is performed when an applicant requests grading of a particular lot of shell eggs. Requests are made not on a regular basis. Charges or fees are based on the time, travel, and expenses needed to perform the work. This service also may be called the fee grading service. Shell eggs graded under fee grading service are not eligible to be identified with the official grademarks shown in § 56.36.

(b) *Continuous grading service on a resident basis and continuous grading service on a nonresident basis.* Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty. Both of these services are performed when an applicant requests that a USDA licensed grader be stationed in the applicant's processing plant and grade shell eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty and the volume of shell eggs received into the plant, while nonscheduled service is based on the cumulative time required to perform the work and an administrative service charge. Shell eggs graded under resident grading service are only eligible to be identified with the official grademarks shown in § 56.36 when processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

(c) *Temporary grading service.* This type of service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Shell eggs graded under temporary grading service are only eligible to be identified with the official grademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in § 56.39.

7. Section 56.37 is amended by revising the section heading and first sentence to read as follows:

§ 56.37 Lot marking of officially identified shell eggs.

Shell eggs identified with the grademarks shown in § 56.36 shall be legibly lot numbered on either the individual egg, the carton, or the consumer package. * * *

8. The undesignated center heading that precedes § 56.39 is revised to read as follows:

Prerequisites to Packaging Shell Eggs Identified With Grademarks

9. In § 56.39, the first sentence is revised to read as follows:

§ 56.39 Quality assurance inspector required.

The official identification with the grademark of any product as provided in §§ 56.35 through 56.41, inclusive, shall be done only under the supervision of a grader or quality assurance inspector. * * *

10. Section 56.40 is amended by revising the section heading and paragraph (c) to read as follows:

§ 56.40 Grading requirements of shell eggs identified with grademarks.

* * * * *

(c) Shell eggs which are to bear the grademark shall be packed only from eggs of current production. They shall not possess any undesirable odors or flavors.

11. In § 56.56, the headings of paragraphs (a) and (b) are both amended by adding the words ''or temporary'' between the words ''resident grading.''

12. Section 56.58 is revised to read as follows:

§ 56.58 Advance information

Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or electronically transmitted to the applicant, or to the applicant's designee, at the applicant's expense.

13. In § 56.65, paragraph (b) is revised to read as follows:

§ 56.65 Procedures for appeal gradings

* * * * *

(b) When the original samples are not available or have undergone a material change, the appeal sample size for the lot shall consist of double the samples required in § 56.4(b).

* * * * *

14. Section 56.75 is revised to read as follows:

§ 56.75 Applicability of facility and operating requirements.

The provisions of § 56.76 shall be applicable to any grading service that is provided on a resident or temporary basis.

15. Section 56.76 is revised to read as follows:

§ 56.76 Minimum facility and operating requirements for shell egg grading and packing plants.

(a) Applicants must comply with all applicable Federal, State and local government occupational safety and health regulations.

(b) *General requirements for premises, buildings and plant facilities.* (1) The outside premises shall be free from refuse, rubbish, waste, unused equipment, and other materials and conditions which constitute a source of odors or a harbor for insects, rodents, and other vermin.

(2) The outside premises adjacent to grading, packing, cooler, and storage rooms must be properly graded and well drained to prevent conditions that may constitute a source of odors or propagate insects or rodents.

(3) Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.

(4) Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and conduct grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.

(5) The floors, walls, ceilings, partitions, and other parts of the grading and packing rooms including benches and platforms shall be constructed of materials that are readily cleanable, maintained in a sanitary condition, and impervious to moisture in areas exposed to cleaning solutions or moist conditions. The floors shall be constructed as to provide proper drainage.

(6) Adequate toilet accommodations which are conveniently located and separated from the grading and packing rooms are to be provided. Handwashing facilities shall be provided with hot and cold running water, an acceptable handwashing detergent, and a sanitary method for drying hands. Toilet rooms shall be ventilated to the outside of the building and be maintained in a clean and sanitary condition. Signs shall be posted in the toilet rooms instructing employees to wash their hands before returning to work. In new or remodeled construction, toilet rooms shall be

located in areas that do not open directly into processing rooms.

(7) A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.

(8) Adequate packing and packaging storage areas are to be provided that protect packaging materials and are dry and maintained in a clean and sanitary condition.

(c) *Grading and packing room requirements.* (1) The egg grading or candling area shall be adequately darkened to make possible the accurate quality determination of the candled appearance of eggs. There shall be no other light source or reflection of light that interfere with, or prohibit the accurate quality determination of eggs in the grading or candling areas.

(2) The grading and candling equipment shall provide adequate light to facilitate quality determinations. When needed, other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.

(3) The grading and candling equipment must be sanitarily designed and constructed to facilitate cleaning. Such equipment shall be kept reasonably clean during grading and packing operations and be thoroughly cleaned at the end of each operating day.

(4) Egg weighing equipment shall be constructed of materials to permit cleaning; operated in a clean, sanitary manner; and shall be capable of ready adjustment.

(5) Adequate ventilation, heating, and cooling shall be provided where needed.

(d) *Cooler room requirements.* (1) Cooler rooms holding shell eggs that are identified with a consumer grade shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C) and a relative humidity of 70 percent or higher. Accurate thermometers and hygrometers shall be provided for monitoring cooler room temperatures and relative humidity.

(2) Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.

(e) *Shell egg protecting operations.* (1) Shell egg protecting (oil application) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.

(2) Component equipment within the shell egg protecting system, including holding tanks and containers, must be sanitarily designed and maintained in a clean and sanitary manner, and the application equipment must provide an adequate amount of oil for shell coverage of the volume of eggs processed.

(3) Eggs with excess moisture on the shell shall not be shell protected.

(4) Oil having any off odor, or that is obviously contaminated, shall not be used in shell egg protection operations. Oil is to be filtered prior to application.

(5) The component equipment of the application system shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed.

(6) Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.

(f) *Shell egg cleaning operations.* (1) Shell egg washing equipment must be sanitarily designed, maintained in a clean and sanitary manner, and thoroughly cleaned at the end of each operating day.

(2) Shell egg drying equipment must be sanitarily designed and maintained in a clean and sanitary manner. Air used for drying purposes must be filtered. These filters shall be cleaned or replaced as needed to maintain a sanitary process.

(3) The temperature of the wash water shall be maintained at 90 °F (32.2 °C) or higher, and shall be at least 20 °F (6.7 °C) warmer than the internal temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle. Accurate thermometers shall be provided for monitoring wash water temperatures.

(4) Approved cleaning compounds shall be used in the wash water.

(5) Wash water shall be changed approximately every 4 hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.

(6) Replacement water shall be added continuously to the wash water of washers. Chlorine or quaternary sanitizing rinse water may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse water may not be used as part of the replacement water.

(7) Only potable water may be used to wash eggs. Each official plant shall submit certification to the national office stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds 2 parts per million, equipment shall be provided to reduce the iron content below the maximum allowed level. Frequency of testing for potability and iron content shall be determined by the Administrator. When the water source is changed, new tests are required.

(8) Waste water from the egg washing operation shall be piped directly to drains.

(9) The washing, rinsing, and drying operations shall be continuous and shall be completed as rapidly as possible to maximize conservation of the egg's quality and to prevent sweating of eggs. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.

(10) Prewetting shell eggs prior to washing may be accomplished by spraying a continuous flow of water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this section.

(11) Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water. The spray-rinse water shall contain a sanitizer that has been determined acceptable for the intended use by the national supervisor and of not less than 100 p/m nor more than 200 p/m of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the national supervisor.

(12) Test kits shall be provided and used to determine the strength of the sanitizing solution.

(13) During non-processing periods, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat that may diminish the quality of the egg.

(14) Washed eggs shall be reasonably dry before packaging and packing.

(15) Steam, vapors, or odors originating from the washing and rinsing operation shall be continuously and directly exhausted to the outside of the building.

(g) *Requirements for eggs officially identified with a grademark.* (1) Shell eggs that are officially identified with a consumer grademark shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging.

(2) Eggs that are to be officially identified with the grademark shall be packed only in new or good used packing material and new packaging materials that are clean, free of mold, mustiness and off odors, and must be of sufficient strength and durability to adequately protect the eggs during

normal distribution. When packed in other than fiber packing material, the containers must be of sound construction and maintained in a reasonably clean manner.

(h) *Use of approved chemicals and compounds.* (1) All egg washing and equipment cleaning compounds, defoamers, destainers, sanitizers, inks, oils, lubricants, or any other compound that comes into contact with the shell eggs shall be approved by the national supervisor for their specified use and handled in accordance with the manufacturer's instructions.

(2) All pesticides, insecticides, and rodenticides shall be approved for their specified use and handled in accordance with the manufacturer's instructions.

Dated: May 25, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–12201 Filed 6–1–04; 8:45 am]

BILLING CODE 3401–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–172–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require installation of a linear fluid-filled damper between each elevator surface and the airplane structure on both the left and right sides of the airplane, along with related structural and system modifications. This action is necessary to prevent pitch oscillation (vertical bouncing) of the fuselage due to excessive ice buildup on the elevator servo tab, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–172–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–172–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ series airplanes. The CAA advises that BAE Systems (Operations) Limited investigations have determined that, due to excessive ice buildup on the elevator servo tab under certain unusual atmospheric conditions, pitch oscillation (vertical bouncing) of the fuselage can occur. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Modification Service Bulletin SB.27–169–01692A, dated December 10, 2001, which describes procedures for installation of linear fluid-filled dampers between each elevator surface and the airplane structure on both the left and right sides of the airplane. SB.27–169–01692A also refers to additional BAE Systems (Operations) Limited Modification Service Bulletins as appropriate sources of information for further actions which must be accomplished prior to, or in conjunction with, SB.27–169–01692A. The additional service bulletins are:

- SB.27–168–01614EH, dated January 22, 2001, which describes procedures for modifying the tailfin top fairing by introducing access holes and reinforcement to the fairing, and

introducing lanyards to the fairing access panels;

• SB.27–167–01614C.D.G, dated January 2, 2001, which describes procedures for installation of torsion box and drop-link assemblies and elevator brackets, and structural relief and reinforcement; and

• SB.27–170–01692E, Revision 2, dated March 20, 2001 (for BAE 146 series airplanes only); and SB.27–171–01692F, Revision 1, dated March 20, 2001 (for Avro 146-RJ series airplanes only), which describe procedures for installing electrical system elements for operation of elevator control surface damper bypass valves.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified BAE Systems (Operations) Limited Modification Service Bulletin SB.27–169–01692A as mandatory and issued British airworthiness directive 005–12–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed AD and Referenced Service Bulletins

Operators should note that, although the referenced service bulletins describe procedures for completing a form recording accomplishment of the service bulletin and returning that form to the manufacturer, this proposed AD would not require that action. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD. Accomplishment of the proposed actions specified in the referenced service bulletins would require an approximate number of work hours as shown in Table 1 of this proposed AD, at an average labor rate of $65 per work hour.

TABLE 1.—WORK HOURS AND COSTS

Service bulletin #	Parts costs	Work hours	Total parts and labor costs
SB.27–169–01692A	$10,415	8	$10,935
SB.27–168–01614EH	713	40	3,313
SB.27–167–01614C.D.G	2,937	12	3,717
SB.27–170–01692E, Revision 2	826	20	2,126
SB.27–171–01692F, Revision 1	826	12	1,606

Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $1,076,405 and $1,105,005, or between $19,571 and $20,091 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bae Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–172–AD.

Applicability: All Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent pitch oscillation (vertical bouncing) of the fuselage due to excessive ice buildup on the elevator servo tab, and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 18 months from the effective date of this AD, install linear fluid-filled dampers between each elevator surface and airplane structure on both the left and right sides of the airplane and perform the related structural and system modifications; by doing all of the actions in and in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.27–169–01692A, dated December 10, 2003; and additional BAE Systems (Operations) Limited Modification Service Bulletins SB.27–168–01614EH, dated January 22, 2001; SB.27–167–01614C.D.G, dated January 2, 2001; and SB.27–170–01692E, Revision 2, dated March 20, 2001 (for Model BAE 146 series airplanes) or SB.27–171–01692F, Revision 1, dated March 20, 2001 (for Model Avro 146–RJ series airplanes), as applicable.

No Reporting Requirement

(b) Although all referenced service bulletins describe procedures for reporting accomplishment to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in British airworthiness directive 005–12–2001.

Issued in Renton, Washington, on May 25, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12446 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This proposal would require repetitive inspections of the check valves and air supply ducts of the rear bulkhead for damage, and related corrective actions. This proposal also would require eventual rework or replacement of the air supply ducts, which would terminate the repetitive inspections for the air supply ducts only. This action is necessary to prevent disconnection of an air supply duct, which, if combined with failure of a bulkhead check valve, could result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–158–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, suite 410, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–158–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that the flanges on the air supply ducts of the rear bulkhead were bonded to the duct using a manufacturing procedure that did not meet design specifications. Investigation revealed that such bonding could lose 80 percent of its shear strength at elevated temperatures. If the bonding loses shear strength, it could result in premature cracking and consequent

failure (detachment of the flappers) of the bulkhead check valve. Disconnection of an air supply duct, if combined with failure of a bulkhead check valve, could result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–21–053, Revision ''A'', dated January 28, 2003, which describes procedures for repetitive inspections of the air supply ducts of the rear bulkhead for damage. Bombardier has also issued Alert Service Bulletin A601R–21–054, dated November 8, 2001, which describes procedures for repetitive inspections of the check valves of the rear bulkhead for damage. Both service bulletins describe procedures for related corrective actions if any damage is found. Service Bulletin A601R–21–054 recommends that Service Bulletin A601R–21–053, Revision ''A'', be done at the same time.

Service Bulletin A601R–21–053, Revision ''A'', describes procedures for the following: A visual inspection of the left- and right-hand air supply ducts for damage (tearing, delamination, or cracking). If any damage is found, the corrective action involves replacement of the affected duct with a new duct before further flight, which eliminates the need for the repetitive inspections for that duct only. If no damage is found, the inspection is repeated. The service bulletin also describes procedures for eventual rework or replacement of the air supply ducts, which eliminates the need for the repetitive inspections of the air supply ducts.

Service Bulletin A601R–21–054 describes procedures for the following: A visual inspection of the bulkhead check valves (including the guide clamps) for damage (cracking or breakage), and a leak test of the air conditioning system. If any damage is found, the corrective action involves replacement of the affected bulkhead check valve with a new valve before further flight. If no damage is found, the inspection is repeated.

Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition. TCCA classified this service information as mandatory and issued Canadian airworthiness directive CF–2003–05, dated February 4, 2003, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Among Canadian Airworthiness Directive, Service Information, and This Proposed AD

The applicability in the Canadian airworthiness directive specifies Bombardier Model CL–600–2B19 airplanes, serial numbers 7003 through 7477; however, the proposed AD would be applicable to all Bombardier Model CL–600–2B19 airplanes. TCCA has informed us that the Canadian airworthiness directive is in error, and should have specified all Bombardier Model CL–600–2B19 airplanes.

The Canadian airworthiness directive requires amending the Transport Canada approved maintenance schedule within 30 days after the effective date of the Canadian airworthiness directive, by incorporating Inspection Task No. 21–51–21–07, and incorporating the task interval for the bulkhead check valves, as specified in Part 1, Section 2, of Revision 7 of the Maintenance Review Board Report, dated April 11, 2001. However, this proposed AD does not contain such a requirement, but would mandate the equivalent maintenance tasks specified in Service Bulletin A601R–21–054, in lieu of amending the maintenance schedule. We have determined that these tasks address the unsafe condition in the same manner as would amending the maintenance schedule.

The Canadian airworthiness directive does not specifically cite a repetitive inspection interval for the check valves; Inspection Task No. 21–51–21–07, cited in the Canadian airworthiness directive, does require repetitive inspections. This proposed AD would require repeating the inspections of the check valves at intervals not to exceed 4,000 flight hours, which is in line with the Canadian requirements. The inspections will continue until a terminating action is developed, approved, and available.

The Canadian airworthiness directive and Service Bulletin A601R–21–054 recommend sending all damaged check valves to the manufacturer for analysis; however, this AD does not include that requirement.

The service bulletins referenced in this proposed AD specify to submit certain information to the manufacturer, but this proposed AD does not include such a requirement.

Clarification of Type of Inspection

The Canadian airworthiness directive and the referenced service bulletins specify that operators do a visual inspection of the check valves and air supply ducts of the rear bulkhead. We have determined that the inspection procedures should be described as a ''detailed inspection.'' Note 1 has been included in this proposed AD to define this type of inspection.

Interim Action

This proposed AD is considered to be interim action. Analysis of the check valves is being done by the manufacturer to obtain better insight into the nature, cause, and extent of the damage, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Cost Impact

We estimate that 280 airplanes of U.S. registry would be affected by this proposed AD.

It would take about 2 work hours per airplane to accomplish the proposed inspection of the check valves, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $36,400, or $130 per airplane, per inspection cycle.

It would take about 4 work hours per airplane to accomplish the proposed inspection of the air supply duct, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $72,800, or $260 per airplane, per inspection cycle.

It would take about 4 work hours per airplane to accomplish the proposed replacement of the check valves, at an average labor rate of $65 per work hour. Required parts would be free of charge.

Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $72,800, or $260 per airplane.

It would take about 3 work hours per airplane to accomplish the proposed rework of the air supply ducts, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the cost impact of the proposed rework on U.S. operators is estimated to be $54,600, or $195 per airplane.

It would take about 2 work hours per airplane to accomplish the proposed replacement of the air supply ducts, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $36,400, or $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–158–AD.

Applicability: All Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent disconnection of an air supply duct, which, if combined with failure of a bulkhead check valve, could result in rapid depressurization of the airplane, accomplish the following:

Service Information References

(a) Paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD pertain to the service information referenced in this AD.

(1) The term service bulletin, as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–21–053, Revision ''A'', dated January 28, 2003; or Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001; as applicable.

(2) Although the service bulletins referenced in this AD specify to submit certain information to the manufacturer, this AD does not include such a requirement.

(3) Bombardier Alert Service Bulletin A601R–21–054, dated November 8, 2001, recommends sending all damaged check valves to the manufacturer for analysis; however, this AD does not include that requirement.

(4) Accomplishment of the actions specified in Bombardier Alert Service Bulletin A601R–21–053, dated November 8, 2001, before the effective date of this AD is considered acceptable for compliance with the applicable actions specified in this AD.

Repetitive Inspections/Related Corrective Actions

(b) Within 500 flight hours after the effective date of this AD: Do the detailed inspections and related corrective actions required by paragraphs (b)(1) and (b)(2) of this AD, per the applicable service bulletin.

(1) Inspect the left- and right-hand bulkhead check valves for damage (cracking, breakage). If any damage is found, before further flight, replace the damaged valve. Repeat the inspection at intervals not to exceed 4,000 flight hours.

(2) Inspect the left- and right-hand air supply ducts of the rear bulkhead for damage (tearing, delamination, or cracking). If any damage is found, before further flight, either rework or replace the damaged air supply duct, which ends the inspections for that air supply duct only. If no damage is found, repeat the inspection thereafter at intervals not to exceed 500 flight hours until accomplishment of paragraph (c) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.

Terminating Action for Repetitive Inspections of Air Supply Ducts

(c) Except as required by paragraph (b)(2) of this AD: Within 5,000 flight hours after the effective date of this AD, either rework or replace the left- and right-hand air ducts, as applicable, per the applicable service bulletin. Accomplishment of this paragraph ends the repetitive inspections required by paragraph (b)(2) of this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–05, dated February 4, 2003.

Issued in Renton, Washington, on May 20, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12445 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3 series airplanes. This proposal would require installing a new warning annunciator light on the central warning panel and revising the Normal Procedures Section of the Aircraft Flight Manual to provide the flightcrew with procedures related to the new light. This action is necessary to prevent an engine shut-down, which could result in loss of control of the airplane and consequent injury to flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–209–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–209–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3 series airplanes. The CAA advises that several occurrences of in-flight shut down of the engine while flying in icing conditions have been reported where failure to deploy the engine intake anti-icing vanes (inertial separators) has been cited as a contributory factor. When other anti-icing systems have been selected, there was no warning annunciator light to alert the flightcrew that the inertial separators were not yet deployed. This condition, if not corrected, could result in an engine shut down, which could result in loss of control of the airplane and consequent injury to flightcrew and passengers.

Explanation of Relevant Service Information

Short Brothers has issued Service Bulletins SD3 Sherpa–31–2, Revision 1, dated October 29, 2002 (for Model SD3–SHERPA series airplanes); SD360 Sherpa–31–01, Revision 1, dated October 29, 2002 (for Model SD3–60 SHERPA series airplanes); SD330–31–15, Revision 1, dated October 29, 2002 (for Model SD3–30 series airplanes); and SD360–31–06, Revision 1, dated October 29, 2002 (for Model SD3–60 series airplanes); as applicable. The service bulletins describe procedures for installing a new warning annunciator light on the central warning panel and revising the Normal Procedures Section of the Aircraft Flight Manual to provide the flightcrew with procedures related to the new warning light. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 002–06–2002, 003–06–2002, 004–06–2002, and 005–06–2002 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously.

Cost Impact

The FAA estimates that 125 Model SD3 series airplanes of U.S. registry

would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $4,800 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $843,750, or $6,750 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers PLC: Docket 2002–NM–209–AD.]

Applicability: All Model SD3 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine shut down, which could result in loss of control of the airplane and consequent injury to flight crew and passengers, accomplish the following:

Installation and Airplane Flight Manual (AFM) Revision

(a) Within five months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a new warning annunciator light on the central warning panel in accordance with the Accomplishment Instructions of the applicable Shorts service bulletins listed in Table 1 of this AD; and

(2) Revise the Normal Procedures Section of the AFM by inserting a copy of the applicable pages of the Shorts AFM document listed in Table 1 of this AD, per the Accomplisment Instructions of the applicable Shorts service bulletin listed in Table 1 of this AD.

TABLE 1.—SHORTS SERVICE BULLETINS AND AFMS

For Model—	Shorts service bulletin—	Shorts AFM document No.—
SD3–SHERPA series airplanes	SD3 Sherpa–31–2, Revision 1, dated October 29, 2002.	Doc. No.SB.5.2, P/5.
SD3–60 SHERPA series airplanes	SD360 Sherpa–31–01, Revision 1, dated October 29, 2002.	Doc. No.SB.6.2, P/3.
SD3–30 series airplanes	SD330–31–15, Revision 1, dated October 29, 2002.	Doc. No. SBH.3.3, P/20 or Doc. No.SBH.3.6, P/18, as applicable.
SD3–60 series airplanes	SD360–31–06, Revision 1, dated October 29, 2002.	Doc. No. SB.4.8, P/19 or Doc. No. SB.4.6, P/20, as applicable.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Note 1: The subject of this AD is addressed in British airworthiness directives 002–06–2002, 003–06–2002, 004–06–2002, and 005–06–2002.

Issued in Renton, Washington, on May 25, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12444 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–39–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 P1, P2, T1, and T2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model EC135 P1, P2, T1, and T2 helicopters. That AD currently requires adding the AD or a statement to the Rotorcraft Flight Manual (RFM) informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by an unusual vibration occurs during flight. That AD also requires visually inspecting the main rotor drive torque strut assembly (strut) for a crack or a break, recording the inspections in the historical or equivalent record, remarking and relocating the strut, as

appropriate, and replacing any unairworthy strut with an airworthy strut. Also, that AD establishes life limits for certain struts and revises the life limit for other struts. This action would require the same actions as the existing AD except that it proposes to change the visual inspection from a one-time inspection to daily inspections; reduces the life limit for aluminum struts; and eliminates the once-only transfer and remarking of certain struts. This proposal is prompted by an incident in which a pilot felt an in-flight increase in vibration and subsequent discovery of a failed strut. The actions specified by the proposed AD are intended to prevent failure of a strut and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw–adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self–addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2003–SW–39–AD.'' The postcard will be date stamped and returned to the commenter.

Discussion

On September 29, 2003, the FAA issued AD 2003–20–11, Amendment 39–13329 (68 FR 58581, October 10, 2003), Docket 2003–SW–08–AD, to require adding the AD or a statement to the RFM informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by an unusual vibration occurs during flight. That AD also requires visually inspecting the strut for a crack or a break within 10 hours time-in-service, recording the inspections in the historical or equivalent record, re-marking and relocating the strut, as appropriate, and replacing any unairworthy strut with an airworthy strut. Also, that AD establishes life limits for certain struts and revises the life limit for other struts.

Since issuing that AD, there has been another incident in which a pilot felt an in-flight increase in vibration. Post-flight examinations revealed a fractured aluminum strut.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on Eurocopter Model EC135 P1, P2, T1, and T2 helicopters. The LBA advises that the holders of affected aircraft registered in the Federal Republic of Germany must carry out the inspection for a crack, marking, replacement, and reduction of life limit of struts in accordance with the manufacturer's alert service bulletin.

Eurocopter has issued Alert Service Bulletin EC135–63A–002, Revision 4, dated July 7, 2003 (ASB), concerning reduction in life limit for the strut, and visual inspections of the strut and emergency stop. The ASB contains errors—in paragraph 1.A., the abbreviation ''S/N'' should be ''P/N'' and in paragraphs 1.C., 1.E.(1), and 1.E.(2), it incorrectly states that the ASB is Revision 3 rather than Revision 4. The LBA classified this ASB as mandatory and issued AD No. 2001–107/3, dated August 21, 2003, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would supersede AD 2003–20–11 and require: adding the AD or a statement to the RFM informing the pilot to reduce power and land as soon as practicable if a thump-like sound followed by unusual vibration occurs during flight; visually inspecting the strut for a crack or a break before the first flight of each day; replacing any unairworthy strut with an airworthy strut; replacing all aluminum struts with titanium struts on or before accumulating 500 hours TIS or no later than December 31, 2004, whichever occurs first; installing the struts in pairs; and canceling the once-only transfer and remarking of certain struts.

The FAA estimates that this proposed AD would affect 50 helicopters of U.S. registry, and would take approximately 92.25 work hours per helicopter to accomplish the inspections and parts replacement at an average labor rate of $65 per work hour. Required parts would cost approximately $7,296 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $664,612 to replace the aluminum struts on the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft economic evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–13329 (68 FR 58581, October 10, 2003), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter Deutschland GmbH: Docket No. 2003–SW–39–AD. Supersedes AD 2003–20–11, Amendment 39–13329, Docket No. 2003–SW–08–AD.

Applicability: Model EC135 P1, P2, T1, and T2 helicopters, with main rotor drive aluminum torque strut assembly (strut), part number (P/N) L633M1001 103 or L633M1001 105, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the strut and subsequent loss of control of the helicopter, do the following:

(a) Before further flight, insert a copy of this AD or insert a statement into the Emergency Procedures Section of the Rotorcraft Flight Manual (RFM) to inform the pilot to reduce power and land as soon as practicable if a thump-like sound followed by an unusual vibration occurs during flight.

(b) Before the first flight of each day, using a light and mirror, inspect each aluminum strut for a crack or a break by following the Accomplishment Instructions, paragraph 3.B. of Eurocopter Alert Service Bulletin EC135–63A–002, Revision 4, dated July 7, 2003 (ASB). Replace any cracked or broken strut with a new titanium strut, P/N L633M1001 104, before further flight.

(c) For each aluminum strut with 400 or more hours TIS, within the next 100 hours time-in-service (TIS), replace each aluminum strut with a titanium strut, P/N L633M1001 104.

(d) This AD revises the Airworthiness Limitations section of the maintenance manual by reducing the retirement life of each aluminum strut, P/N L633M1001 103 and L633M1001 105, to 500 total hours TIS or retiring them no later than December 31, 2004, whichever comes first.

(e) The aluminum struts must be replaced with titanium struts in pairs and at the same time. Installing one aluminum strut and one titanium strut is not authorized. After installing titanium struts, recalculate the weight and balance using 0.356 kg as the weight and 1498.76 kgmm as the moment for both titanium struts.

Note 1: The once-only transferring and remarking of certain aluminum struts provided in the superseded AD are no longer authorized.

(f) Replacing aluminum struts, P/N L633M1001 103 and L633M1001 105, with titanium struts, P/N L633M1001 104, constitutes terminating action for the requirements of this AD. Titanium struts have no life limit.

(g) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group for information about previously approved alternative methods of compliance.

Note 2: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2001–107/3, dated August 21, 2003.

Issued in Fort Worth, Texas, on May 21, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–12443 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–302–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require a one-time inspection to determine the part number of the engine mounting frames, brace struts, and attachment fittings; and related corrective action. This action is necessary to ensure the structural integrity of the engine-to-wing load path and prevent possible separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–302–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–302–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The CAA–NL advises that there have been several approved modifications to Model F27 series airplanes over the years that add higher weight and more powerful engines, increased maximum landing weights, and reduced flap settings. These changes result in higher loads on the engine mounts, brace struts, and attachment fittings. Although replacement of the engine mounts, brace struts, and attachment fittings with new improved, stronger units was part of the previous modification procedures, it has been determined that the original parts may have been re-installed on some of the modified airplanes. These modifications ensure the structural integrity of the engine-to-wing load path and prevent possible separation of the engine from the airplane.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin F27/54–53, dated February 15, 2002, which describes procedures for a one-time visual examination to determine the part number (PN) of the engine mounting frames, brace struts, and attachment fittings; and related corrective action. The related corrective action involves replacing incorrect parts on airplanes having a post-Fokker Service Bulletin F27/71–29, F27/71–31, F27/71–41, or F27/71–42 configuration. Service Bulletin F27/54–53 references the following service bulletins for procedures for the related corrective actions:

- Fokker Service Bulletin 51–24, dated December 1, 1971; which describes procedures for installing a new, improved engine mounting frame.
- Fokker Service Bulletin F27/54–26, Revision 5, dated September 30, 2001; which describes procedures for installing new, improved, stronger brace struts and brackets.

Accomplishment of the actions specified in Service Bulletin F27/54–53 is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 2002–067, dated May 31, 2002, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept us informed of the situation described above. We have examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Fokker Service Bulletin F27/54–53, except as discussed below.

Differences Among Service Bulletin, Dutch Airworthiness Directive, and This Proposed AD

The Dutch airworthiness directive and Service Bulletin F27/54–53 recommend that the one-time inspection to determine the part numbers of the engine mounting frames, brace struts, and attachment fittings be done within 6 months after the effective date/issuance of those documents; however, this proposed AD would require operators to do the one-time inspection within 24 months after the effective date of this AD. In developing the compliance time for this action, we considered the degree of urgency associated with addressing the subject unsafe condition as well as the availability of required parts. We have determined that 24 months represents an appropriate interval of time in which an ample number of required parts will be available to modify affected airplanes, if corrective action is required, without adversely affecting the safety of these airplanes. This change has been coordinated with the CAA.

The applicability section in the Dutch airworthiness directive includes, in part, ''all aircraft that operate with a standard flap setting for landing of 26.5 degrees.'' Service Bulletin F27/54–53 includes specific actions for airplanes that operate with a standard flap setting for landing of 26.5 degrees. Therefore, such airplanes do not require specific identification in the applicability section of this proposed AD.

Service Bulletin F27/54–53 refers to a visual examination to determine certain P/Ns; the Dutch airworthiness directive specifies to ''inspect'' for P/N identification. We have determined that the inspection should be described as a ''general visual inspection.'' Note 1 has been included in this proposed AD to define this type of inspection.

Cost Impact

We estimate that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take about 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $10,660, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2002–NM–302–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category; on which one or more of the modifications specified in paragraph 1.A.(1) of Fokker Service Bulletin F27/54–53, dated February 15, 2002, has been done.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of the engine-to-wing load path and prevent possible separation of the engine from the airplane, accomplish the following:

One-Time Inspection

(a) Within 24 months after the effective date of this AD: Do a one-time general visual inspection to determine the part numbers of the engine mounting frames, brace struts, and attachment fittings; per the Accomplishment Instructions of Fokker Service Bulletin F27/54–53, dated February 15, 2002. Do the inspection and corrective action per the Accomplishment Instructions of the service bulletin. Do the related corrective action before further flight.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Related Service Information

Note 2: Fokker Service Bulletin F27/54–53, dated February 15, 2002, references Fokker Service Bulletin 51–24, dated December 1, 1971, as the appropriate source of service information for installing a new, improved engine mounting frame; and Fokker Service Bulletin F27/54–26, Revision 5, dated September 30, 2001, as the appropriate source of service information for installing new, improved, stronger brace struts and brackets.

Parts Installation

(b) As the effective date of this AD, no person may install on any airplane an engine mounting frame, brace strut, or attachment fitting unless that part has been identified as appropriate for the airplane configuration, as specified in the Accomplishment Instructions of Fokker Service Bulletin F27/54–53, dated February 15, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 2002–067, dated May 31, 2002.

Issued in Renton, Washington, on May 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12399 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4874–N–06]

Negotiated Rulemaking Advisory Committee on the Operating Fund; Notice of Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee meeting.

SUMMARY: This document announces a meeting of HUD's Negotiated Rulemaking Advisory Committee on the Operating Fund. The purpose of the committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's ''Public Housing Operating Cost Study.''

DATES: The committee meeting will be held on June 8 and June 9, 2004. Each day the meeting will start at approximately 8:30 a.m. and run until approximately 5 p.m., unless the committee agrees otherwise.

ADDRESSES: The committee meeting will take place at the Bolger Center, North Building, 9600 Newbridge Drive, Potomac, MD 20854–4436; telephone: (301) 983–7000 (this telephone number is not toll-free). For further information and directions to the Bolger Center, please go to the following Web site: *http://www.bolgercenter.dolce.com.*

FOR FURTHER INFORMATION CONTACT: Chris Kubacki, Director, Funding and Financial Management Division, Public and Indian Housing—Real Estate Assessment Center, Suite 800, Department of Housing and Urban Development, 1280 Maryland Ave SW., Washington, DC 20024–2135; telephone (202) 708–4932 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Through the Operating Fund program, HUD distributes operating subsidies to public housing agencies (PHAs). A regulatory description of the Operating Fund program can be found at 24 CFR part 990. The Operating Fund Formula regulations were developed through negotiated rulemaking procedures. Negotiated rulemaking for an Operating Fund Formula was initiated in March 1999, and resulted in a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Formula that is currently in effect.

During the negotiated rulemaking for the Operating Fund Formula, Congress in the Conference Report (H.Rept. 106–379, October 13, 1999) accompanying HUD's Fiscal Year (FY) 2000 Appropriation Act (Pub. L. 106–74, approved October 20, 1999) directed

HUD to contract with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. Harvard GSD issued a final report, the Harvard Cost Study, on June 6, 2003. In Section 222 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004), Congress directed the Secretary to conduct negotiated rulemaking with the publication of a final rule by July 1, 2004.

On March 10, 2004, HUD published a document establishing a Negotiated Rulemaking Advisory Committee on the Operating Fund (Committee) to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard Cost Study. The Committee has met three times. The first meeting was held in Washington, DC on March 30, March 31, and April 1, 2004. A second meeting was held, also in Washington, DC, on April 13–15, 2004. The third Committee meeting was held on May 11 and 12, 2004, in Atlanta, Georgia.

II. Committee Meeting

This document announces a fourth meeting of the Committee. The Committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) and the implementing regulations issued by the General Services Administration at 41 CFR part 102–3, HUD publishes notices in the **Federal Register** of an advisory committee meeting at least 15 calendar days prior to the meeting. In this case HUD is providing less than 15-days advance notice due to exceptional circumstances. The Committee was originally scheduled to complete its work at the third meeting. Although great progress was made at the previous meeting towards the development of a rule, the Committee determined that a fourth meeting would be necessary to complete its work. The time required to complete hotel reservations and other logistical arrangements prevented publication of this meeting notice prior to today's date.

The agenda planned for the meeting includes discussion of issues relating to the development of changes in response to the Harvard Cost Study. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

Dated: May 27, 2004.

Deborah Hernandez,

Director, Office of Voucher Programs.

[FR Doc. 04–12495 Filed 6–1–04; 8:45 am]

BILLING CODE 4210–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV052–0079; FRL–7669–3]

Approval and Promulgation of Implementation Plans; New Source Review; State of Nevada, Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action is a proposed partial approval and partial disapproval of several rules that were submitted as a revision of the Clark County portion of the Nevada State Implementation Plan (SIP). We had approved a similar version of these rules into the Nevada SIP in 1999. See 64 FR 25210 (May 11, 1999). Our approval was appealed to the U.S. Court of Appeals for the Ninth Circuit, which vacated the 1999 approval and remanded our approval of the rules for further consideration. *See Hall* v. *EPA,* 273 F.3d 1146 (9th Cir. 2001). This proposed partial approval and partial disapproval of the rules for the reasons discussed more fully below responds to the issues raised in the court's remand.

The rules at issue in this proposed action were adopted by the Clark County Department of Air Quality Management for issuing permits for new or modified stationary sources in Clark County to comply with the applicable permitting requirements under parts C and D of title I of the Clean Air Act as amended in 1990 to prevent significant deterioration in attainment areas and to attain the National Ambient Air Quality Standards in nonattainment areas. EPA is also proposing to approve as a revision to the Nevada SIP a State regulation prohibiting the construction of major new or modified sources under exclusive State jurisdiction in the nonattainment areas within Clark County. The intended effect of this proposed action is to ensure that the Clark County Department of Air Quality Management's permitting rules are consistent with Ninth Circuit's ruling in *Hall* v. *EPA* and with the requirements of the Clean Air Act, as amended in 1990. EPA is also proposing to amend the appropriate section of the Code of Federal Regulations to reflect the successful court challenge to an EPA approval of previous versions of these local rules. Lastly, under section 110(k)(6) of the Act, EPA is proposing to correct or clarify certain previous final rulemaking actions taken by EPA on revisions to the Clark County portion of the Nevada SIP. EPA is taking comments on this proposal and plans to follow with a final action.

DATES: Comments on this proposed rule must be received in writing by July 2, 2004.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region IX, 75 Hawthorne Street, San Francisco, California, 94105.

You can inspect copies of the State's submittals, EPA's technical support documents (TSDs), and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the State's two submittals at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada 89706. The State's submittal of DAQM's amended rules is available at the Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, Nevada 89155.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, EPA Region IX, Air Division, Permits Office (AIR–3), at (415) 972–3973 or *kohn.roger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Evaluation of Clark County New Source Review Rules

A. The State's Submittal

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency, the Clark County Department of Air Quality Management (DAQM), or were adopted by the State Environmental

Commission (SEC), and submitted by the State air agency, the Nevada Division of Environmental Protection (NDEP), to EPA as revisions to the Nevada State Implementation Plan (SIP).

TABLE 1.—SUBMITTED RULES

Agency	Rule #	Rule title	Adopted	Submitted
DAQM	0	Definitions	10/07/03	10/23/03
DAQM	11	Ambient Air Quality Standards	10/07/03	10/23/03
DAQM	12	Preconstruction Review for New or Modified Stationary Sources.	10/07/03	10/23/03
DAQM	52.8	Gasoline Dispensing Facilities—Section 52 Offset Program	10/07/03	10/23/03
DAQM	58	Emission Reduction Credits	10/07/03	10/23/03
DAQM	59	Emission Offsets	10/07/03	10/23/03
SEC	NAC 445B. 22083.	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	03/29/94	11/20/03

On November 18, 2003, the submittal containing DAQM's rules was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

DAQM's predecessor agency (the Clark County Health District) adopted earlier versions of the Clark County New Source Review (NSR) rules, then numbered section 1 (Definitions), section 11 (Ambient Air Quality Standards), and section 15 (Source Registration), at various times from 1979 through 1981, which we approved into the Clark County portion of the Nevada SIP at various times in 1981 and 1982. Specifically, we approved different defined terms of section 1 (Definitions) into the applicable SIP on three occasions in 1981 and 1982. *See* 46 FR 21758 (April 14, 1981), 46 FR 43141 (August 27, 1981), and 47 FR 26620 (June 21, 1982). We approved section 11 (Ambient Air Quality Standards) into the applicable SIP on August 27, 1981 (46 FR 43141). We approved different subsections of section 15 (Source Registration) into the applicable SIP on two occasions in 1981 and 1982. *See* 46 FR 21758 (April 14, 1981) and 47 FR 26620 (June 21, 1982).

Pursuant to the Clean Air Act Amendments of 1990 (CAA or Act), Clark County revised their NSR rules, then contained in local sections 0, 12, and 58, and in 1995, EPA proposed to approve with a contingency, and disapprove in the alternative, these revised rules into the SIP. *See* 60 FR 38777 (July 28, 1995). Following our 1995 proposed action, Clark County revised their NSR rules (sections 0, 12, and 58) to address the contingency identified by EPA and re-submitted them via NDEP to EPA. In 1999, we found the contingency to have been satisfied and approved the revised NSR rules into the SIP. *See* 64 FR 25210 (May 11, 1999). Our 1999 final action was challenged, and in 2001, the U.S. Court of Appeals for the Ninth Circuit vacated our approval of Clark County's NSR rules (specifically, sections 0, 12, and 58, as submitted and acted on in 1999). *See Hall* v. *EPA,* 273 F.3d 1146 (9th Cir. 2001).

The court vacated our approval on the grounds that EPA did not have an adequate basis under section 110(l) of the Act to conclude that substitution (*i.e.*, replacement or supercession) of the pre-existing NSR SIP rules (sections 1, 11, and 15) with the new NSR rules (sections 0, 12, and 58) would not interfere with attainment of the NAAQS for carbon monoxide (CO) and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) (*i.e.*, the two pollutants for which a sub-region of Clark County, Las Vegas Valley, is designated nonattainment) by the applicable attainment deadlines. In recognition of this ruling, we are proposing to delete and reserve the paragraphs in section 1470 (''Identification of plan'') of 40 CFR part 52, subpart DD (Nevada) that codified our 1999 approval (*i.e.*, 40 CFR 52.1470(c)(37) and (38)) to clarify that, until the effective date of EPA's final approval of the submitted NSR rules into the SIP, sections 1, 11, and 15 (as approved by EPA in 1981 and 1982) represent the applicable SIP NSR rules in Clark County.

Subsequently, Clark County adopted revised NSR rules (then contained in local sections 0, 11, 12, 58, and 59) on December 4, 2001. This version of the Clark County NSR rules, excluding section 11, was submitted to EPA by NDEP by letter dated February 25, 2003. We did not take action on that submittal, which has been superceded by DAQM's adoption of additional revisions to the Clark County NSR rules (now expanded to include section 52, subsection 52.8, as well as sections 0, 11, 12, 58 and 59) on October 7, 2003 and NDEP's re-submittal to EPA dated October 23, 2003. In this notice, we refer to this latest submittal of the DAQM NSR rules (sections 0, 11, 12, 52.8, 58, and 59) as the ''DAQM NSR submittal.'' While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals. The TSD provides additional background information on the various NSR SIP submittals for Clark County.

EPA revised its federal regulations implementing Parts C and D of the CAA on December 31, 2002, and those revisions became effective on March 3, 2003. Because Clark County had submitted a version of its revised NSR rules to us specifically in response to the court's 2001 ruling in *Hall* v. *EPA*, EPA is now evaluating DAQM's NSR submittal based on the federal NSR regulations that were in effect at the time of the ruling in *Hall* v. *EPA* (prior to December 31, 2002). This proposed rulemaking, therefore, does not establish any precedent for evaluating whether a proposed NSR SIP fulfills the requirements of the revised NSR regulations that were published December 31, 2002. The evaluation in this proposed rulemaking of DAQM's NSR submittal is limited to whether the submittal meets the requirements of the federal NSR regulations as they existed at the time of the ruling in *Hall* v. *EPA,* prior to revision on December 31, 2002.

There is no previous version of Nevada Administrative Code (NAC) 445B.22083 (Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels) approved, or submitted for approval, into the Nevada SIP.

Submitted DAQM sections 0, 11, 12, 52.8, 58, and 59 represent a comprehensive revision to Clark County's NSR program and are intended to satisfy the requirements under both part C (prevention of significant deterioration)(PSD) and part D (nonattainment new source review) of

title I of the Act as those parts relate to permitting of major new sources or major modifications as well as provide for a minor source permitting program as required under section 110(a)(2)(C) of the Act. Submitted DAQM section 0 (Definitions) consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution. As is the case for existing SIP section 1 (Definitions), DAQM section 0 also contains numerous definitions of terms used in prohibitory rules not related to NSR. Some of these prohibitory rules are already approved into the SIP (*e.g.,* SIP section 53 (Oxygenated Gasoline Program)) while others are expected to be approved into the SIP in the near future (*e.g.,* DAQM section 54 (Cleaner Burning Gasoline) and DAQM sections 90 through 94 (related to various fugitive dust sources)). Therefore, with respect to submitted DAQM section 0, we are proposing to approve the entire rule, not just those definitions related to NSR, however, as explained later in this notice, we are proposing to retain in the SIP certain definitions from existing SIP section 1 because they are needed for various existing SIP rules unaffected by this action.

DAQM section 11 sets forth the current national ambient air quality standards (NAAQS). DAQM section 12 sets forth the source permitting requirements, including those related to applicability, control technology (*i.e.,* Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT)), offsets, and public notice. DAQM subsection 52.8 contains offset requirements for new or modified gasoline dispensing facilities whose annual through-put is more than 3.6 million gallons of gasoline per year. DAQM section 58 establishes procedures for the creation, banking, and use of emission reduction credits, and DAQM section 59 establishes offset requirements for new or modified sources. NAC 445B.22083 is a State regulation prohibiting the construction of major new or modified sources under exclusive State jurisdiction in the nonattainment areas within Clark County. The TSD has more information about these rules.

B. EPA's Evaluation and Action

SIP Revision Procedural Requirements

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan or revision submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

DAQM held a public hearing on October 7, 2003 to entertain public comment on revisions to the following local air pollution regulations: sections 0, 11, 12, 52.8, 58 and 59. Notice for that hearing was provided by advertisement in a newspaper of general circulation in the applicable area on three separate days in September 2003. On October 7, 2003, the amended rules were adopted by DAQM and submitted to the State. On October 23, NDEP submitted the amended rules to EPA for approval as a revision to the Nevada SIP. We find that this process satisfies the procedural requirements under sections 110(a)(2), 110(l) and 172(c)(7) of the Act.

With respect to NAC 445B.22083, the Nevada SEC held a public hearing on March 3, 1994 to entertain public comment on the submitted rule. Notice for that hearing was provided by advertisement in a newspaper of general circulation in the applicable area on three separate days in February 1994. On March 3, 1994, the Nevada SEC adopted the submitted rule, which was subsequently renumbered in 2002 to its current codification as NAC 445B.22083. On November 20, 2003, NDEP submitted NAC 445B.22083 to EPA for approval as a revision to the Nevada SIP. We find that this process satisfies the procedural requirements under sections 110(a)(2), 110(l), and 172(c)(7) of the Act.

General Nonattainment and PSD Requirements

We have evaluated DAQM's NSR SIP submittal described above against the applicable requirements of section 110 and parts C and D of (title I) of the Act and the implementing regulations at 40 CFR 51.160 through 51.166 (July 1, 2002). We also relied upon the following materials in the review of this submittal: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (*see* 57 FR 13498, April 16, 1992), EPA's Emission Offset Interpretive Ruling (40 CFR part 51, appendix S), and EPA's policy document entitled, ''Improving Air Quality with Economic Incentive Programs,'' that was published in January 2001.

We note that, on December 31, 2002, EPA published a final notice revising regulations governing NSR programs (''Federal NSR regulations'') mandated by parts C and D of title I of the Act. *See* 67 FR 80186. These revisions include changes in the NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. We selected March 3, 2003 as the effective date for our revision to the Federal NSR regulations. Normally, we would be evaluating the Clark County NSR SIP submittal on the basis of the current Federal NSR regulations, which would include these most recent revisions, but in light of the unusual circumstances surrounding EPA's review process for the Clark County NSR rules, *i.e.,* court vacature of a fully-approved set of NSR rules, we have *not* evaluated the submitted NSR rules for consistency with the revised Federal NSR regulations but have evaluated them instead against the Federal NSR regulations that were in effect when the rules were being revised to address issues raised by EPA in the wake of the *Hall* decision. Like other State and local agencies, Clark County must adopt and submit revisions to its SIP-approved NSR rules implementing the minimum program requirements set forth in the revised Federal NSR regulations no later than January 2, 2006. *See* 67 FR 80186, at 80240 (December 31, 2002). Given this approach to our evaluation of the DAQM NSR submittal, the reader should refer to the 2002 version of 40 CFR parts 51 and 52 (revised as of July 1, 2002) where citations are made herein to the those parts of the CFR.

Nonattainment NSR Requirements

The Act requires all States with nonattainment areas to submit, by November 15, 1992, nonattainment NSR provisions that comply with part D (of title I) of the Act and the related implementing regulations. The Las Vegas Valley (hydrographic area #212), a sub-region within Clark County, was designated as a nonattainment area for both the carbon monoxide (CO) and particulate matter (PM–10) NAAQS under the Clean Air Act Amendments of 1990, and thus, the nonattainment NSR requirements apply to that area. Las Vegas Valley is currently classified as a ''serious'' nonattainment area for both the CO and PM–10 NAAQS. *See* 40 CFR 81.329.

First, it should be noted that, pursuant to State law, the State of Nevada, not a local air or health district, has jurisdiction over plants which generate electricity by using steam produced by the burning of fossil fuel within the State of Nevada. The applicable State law, now codified in Nevada Revised Statutes (NRS)

445B.500, was approved by EPA as a SIP revision in 1980 as NRS 445.546(4). *See* 45 FR 46384 (July 10, 1980). Thus, within Clark County, the State, not DAQM, has jurisdiction over such plants that are located, or that will be constructed, in that county (including the nonattainment area). This exclusion is reflected in submitted DAQM section 12, subsection 12.1.3.2.

The Nevada State Environmental Commission (SEC), the administrative body responsible for the air quality regulations implemented by NDEP, has not adopted a preconstruction permit program that complies with part D of the Act (*i.e.,* Nonattainment NSR) for the nonattainment area within Clark County. Normally, because NDEP has jurisdiction over a particular category of stationary sources in a nonattainment area (*i.e.,* Las Vegas Valley), the State would be required to adopt and submit a Nonattainment NSR program for new major sources or major modifications within the applicable source category in the nonattainment area. However, EPA is not requiring the State to submit Nonattainment NSR rules for Las Vegas Valley because the Nevada SEC adopted a regulation (NAC 445B.22083) that prohibits new power plants or major modifications to existing power plants under State jurisdiction within the Las Vegas Valley nonattainment area, and NDEP has submitted that regulation to EPA as a revision to the SIP. We propose to approve this regulation into the Nevada SIP to resolve the regulatory gap that would otherwise exist in connection with NSR for sources under NDEP jurisdiction within the nonattainment area of Clark County.

With respect to the DAQM NSR submittal, we have concluded that it meets the applicable Nonattainment NSR requirements on the basis of the following findings:

1. The DAQM NSR submittal provides for calculation of emissions offsets based on the same emissions baseline used in the demonstration of reasonable further progress as required by section 173(a)(1)(A) of the Act (*see* DAQM section 0, ''emission reduction credit'' and ''baseline emissions''), provides for emissions offsets to be obtained when the construction permit for a new or modified source is issued and to be in effect by the time the new or modified source commences operation as required by section 173(c)(1) of the Act (*see* DAQM section 59, subsection 59.4.2.6), provides for emissions increases from new major sources or major modifications to be offset by real reductions in actual emissions as required by section 173(c)(1) of the Act (*see* DAQM section 0, ''emission reduction credit (ERC),'' and specifically paragraph (b) of that definition: ''Section 58 emission reduction credit'', and DAQM section 59, subsection 59.1.5), prohibits emissions reductions otherwise required by the Act from being used for NSR offset purposes as required by section 173(c)(2) of the Act (*see* DAQM section 0, ''surplus,'' and DAQM section 59, subsection 59.4.2.1), and provides for appropriate limitations on ''prior shutdown'' emission reduction credits as required in 40 CFR 51.165(a)(3)(ii)(C) (*see* DAQM section 58, subsection 58.3.2.5.3).

2. The DAQM NSR submittal provides for an analysis of alternative sites, sizes, production processes, and environmental control techniques as a prerequisite to issuing construction permits to new major sources or major modifications of nonattainment pollutants as required by section 173(a)(5) of the Act (*see* DAQM section 12, subsection 12.1.4.1(k)), provides for a definition of ''stationary source'' that includes certain internal combustion engines as required by section 302(z) of the Act (*see* DAQM section 0, ''stationary source''), and provides for a demonstration that all other major stationary sources under the same ownership as the proposed source are in compliance with the Act as required by section 173(a)(3) of the Act (*see* DAQM section 12, subsection 12.8.2(b)).

3. The DAQM NSR submittal provides for opportunities for, and due consideration of, public comment as required by 40 CFR 51.161 and provides for substantive requirements for new or modified minor sources as required in 40 CFR 51.160 through 51.164 (see the pollutant-specific requirements in DAQM section 12, subsection 12.2 and the notice and public hearing requirements in DAQM section 12, subsections 12.3.2, 12.3.3, and 12.3.4).

4. The DAQM NSR submittal provides for appropriate stack height limitations as required in 40 CFR 51.118(a) (*see* DAQM section 12, subsection 12.5.4), provides for appropriate review of a source or modification which becomes major due to a relaxation in a federally-enforceable limit as required in 40 CFR 51.165(a)(5)(ii) (*see* DAQM section 0, ''major modification'' and ''stationary source''), provides for additional requirements for any new major source or major modification that may have an impact on visibility in any mandatory Class I Federal Area as required in 40 CFR 51.307(b)(2) (*see* DAQM section 12, subsection 12.12), provides for appropriate consideration of fugitive emissions as required in 40 CFR 51.165(a)(1)(iv)(C) (*see* DAQM section 0, paragraph (b)(1) under ''stationary source''), and provides for application of the Lowest Achievable Emission Rate (LAER) on all new major sources and major modifications of nonattainment pollutants as required in section 173(a)(2) of the Act (*see* DAQM section 12, subsections 12.2.2.2, 12.2.4.2, and 12.2.23.2 for PM–10, and subsections 12.2.7.3 and 12.2.9.3 for CO).

5. The DAQM NSR submittal provides for, as required under subpart 3 of part D of title I of the Act, appropriate thresholds for major sources and major modifications in ''serious'' CO nonattainment areas (*see* DAQM section 0, ''stationary source'' and ''major modification'') in which stationary sources are not significant contributors to ambient CO levels (*see* EPA's proposed finding related to the impact of stationary sources on ambient CO levels in Las Vegas Valley in 68 FR 4141, at 4154 (January 28, 2003)), and provides for an appropriate offset ratio (*see* DAQM section 59, subsection 59.1.4, table 59.1.2).

6. The DAQM NSR submittal provides for, as required under subpart 4 of part D of title I of the Act, appropriate thresholds for major sources and major modifications in ''serious'' PM–10 nonattainment areas (*see* DAQM section 0, ''stationary source'' and ''major modification'') in which PM–10 precursors (*e.g.,* oxides of nitrogen, sulfur dioxide, and volatile organic compounds) do not contribute significantly to PM–10 levels which exceed the standards in the area (*see* EPA's proposed finding related to the impact of PM–10 precursors in Las Vegas Valley in 68 FR 2954, at 2958 (January 22, 2003)), and provides for an appropriate offset ratio (*see* DAQM section 59, subsection 59.1.4, table 59.1.2).

The TSD provides additional information on our evaluation of the DAQM NSR submittal relative to Nonattainment NSR requirements.

PSD NSR Requirements

Part C of title I of the Act contains the provisions, including preconstruction permit requirements for new major sources or major modifications, for the prevention of significant deterioration (PSD) of air quality in areas designated as ''attainment'' or ''unclassifiable'' for the NAAQS. EPA's regulations for PSD permit programs are found in 40 CFR 51.166 and 40 CFR 52.21. Except for CO and PM–10 in Las Vegas Valley (hydrographic area #212), Clark County is designated as ''attainment'' or ''unclassifiable'' for the NAAQS. See 40 CFR 81.329.

EPA offers States (and local air districts) two mechanisms by which to

administer PSD permitting programs. First of all, EPA may delegate the PSD permitting authority of 40 CFR 52.21 to a State or air district. For instance, EPA has provided a partial delegation of authority to NDEP to administer the Federal PSD program (set forth in 40 CFR 52.21). See 68 FR 52837 (September 8, 2003). Thus, NDEP and EPA now share responsibility for administering the PSD program as it relates to major new, or major modifications at, plants which generate electricity by using steam produced by the burning of fossil fuel in Clark County (note that, in the nonattainment portion of Clark County (Las Vegas Valley), such new or modified plants are prohibited under NAC 445B.22083).

Alternatively, a State or air district may develop its own PSD program meeting the requirements of 40 CFR 51.166, and submit these rules for inclusion in the applicable SIP. The DAQM NSR submittal has been submitted for EPA approval under 40 CFR 51.166 as well as the nonattainment NSR provisions discussed in the previous subsection of this notice. With respect to the DAQM NSR submittal, we have concluded that it meets the applicable PSD NSR requirements on the basis of the following findings:

1. The DAQM NSR submittal provides for implementation of best available control technology (BACT) for new major sources or major modifications as required in section 40 CFR 51.166(j) (*see* DAQM section 12, subsections 12.2.3.2, 12.2.4.2, and 12.2.5.2 (PM–10); subsections 12.2.8.2, 12.2.9.3, and 12.2.10.2 (CO); subsections 12.2.11.2, 12.2.12.3, and 12.2.13.2 (volatile organic compounds (VOC)); subsections 12.2.14.4 and 12.2.15.2 (oxides of nitrogen (NO_X)); and subsections 12.2.16.2 (sulfur dioxide (SO_2)), 12.2.17.2 (lead (Pb)), and 12.2.19.7 (non-criteria pollutants subject to PSD)).

2. The DAQM NSR submittal provides for an appropriate air quality analysis, including pre-application air monitoring and post-construction monitoring, as required in 40 CFR 51.166(m) (*see* DAQM section 12, subsections 12.2.4.4, 12.2.4.5, 12.2.5.4, and 12.2.5.5 (PM–10); subsections 12.2.9.2, 12.2.10.4, and 12.2.10.5 (CO); subsections 12.2.12.2, 12.2.13.4, and 12.2.13.5 (VOC); subsections 12.2.14.3, 12.2.15.4 and 12.2.15.5 (NO_X); subsections 12.2.16.4 and 12.2.16.5 (SO_2); subsections 12.2.17.4 and 12.2.17.5 (Lead); subsections 12.2.19.1 and 12.1.19.2 (non-criteria PSD pollutants; subsections 12.5.5 (PSD monitoring significance levels), 12.6.1 (pre-construction ambient air monitoring requirements), and 12.6.2 (post-construction ambient air monitoring requirements)).

3. The DAQM NSR submittal establishes the appropriate maximum allowable ambient air increments (*see* DAQM section 12, subsections 12.2.3.5, 12.2.4.6, and 12.2.5.6 (PM–10); subsections 12.2.14.3 and 12.2.15.6 (NO_X); subsection 12.2.16.6 (SO_2)) and ambient air ceilings (*see* DAQM section 12, subsections 12.2.3.5(b), 12.2.4.6(c), and 12.2.5.6(c) (PM–10); subsections 12.2.9.2 and 12.2.10.4(c) (CO); subsections 12.2.12.2 and 12.2.13.4(b) (VOC); subsections 12.2.14.3 and 12.2.15.6(c) (NO_X); subsections 12.2.16.6(c) (SO_2) and 12.2.17.4 (Lead)) as required in 40 CFR 51.166(c) and (d). DAQM implements the ambient air ceilings by reference to submitted DAQM section 11, which contains the current NAAQS.

4. The DAQM NSR submittal provides for completion of appropriate additional impact analyses related to visibility, soils, and vegetation and appropriate additional air quality impact analysis related to general land use development as required in 40 CFR 51.166(o) (*see* DAQM section 12, subsections 12.2.4.7 and 12.2.5.7 (PM–10); subsections 12.2.9.2 and 12.2.10.6 (CO); subsections 12.2.12.2 and 12.2.13.6 (VOC); subsections 12.2.14.3 and 12.2.15.7 (NO_X); and subsections 12.2.16.7 (SO_2), 12.2.17.6 (Lead), and 12.2.19.3 (non-criteria PSD pollutants)).

5. The DAQM NSR submittal provides for the appropriate Class II PSD classification for all areas in Clark County based on their adopted maximum allowable ambient air increments discussed above.

6. The DAQM NSR submittal provides for protection of air quality related values (including visibility) in Class I areas as required in 40 CFR 51.166(p) (*see* DAQM section 12, subsections 12.2.4.6(b), 12.2.4.8, 12.2.5.6(b), and 12.2.5.8 (PM–10); subsections 12.2.9.2 and 12.2.10.7 (CO); subsections 12.2.12.2 and 12.2.13.7 (VOC); subsections 12.2.14.3, 12.2.15.6(b), and 12.2.15.8 (NO_X); subsections 12.2.16.6(b) and 12.2.16.8 (SO_2); subsection 12.2.17.7 (Lead); subsection 12.3.1.2(b) (notification of the Federal Land Manager (FLM) or other appropriate Federal official); subsection 12.3.4.4 (framework for coordination between DAQM and the FLM or other appropriate Federal official concerning potential impacts to Class I areas)).

7. The DAQM NSR submittal provides for agency and public participation as required in 40 CFR 51.166(p)(1) and 51.166(q) (*see* DAQM section 12, subsections 12.3.1.2(b), 12.3.2, and 12.4.4)).

The TSD provides additional information on our evaluation of the DAQM NSR submittal relative to PSD NSR requirements.

Section 110(l) of the Act

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. For attainment pollutants in attainment areas, our evaluation considers first whether a submitted SIP revision would be as stringent as the provision in the existing applicable implementation plan that it would supercede. If so, then no further analysis is generally required. But, even if we cannot conclude that a SIP revision is as stringent as the corresponding provision in the applicable implementation plan, we may still approve the revision so long as it can be shown that the revision would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

For nonattainment pollutants in nonattainment areas, one court has ruled that our evaluation must extend beyond the issue of whether the submitted SIP revision is as stringent as the existing SIP provision that it would supercede and consider the submitted SIP revision in light of current ambient air quality and nonattainment planning requirements within the applicable nonattainment area. *See Hall* v. *EPA*, 273 F.3d 1146 (9th Cir. 2001). No other court has yet decided this issue. In nonattainment areas too, we may approve SIP relaxations under section 110(l) so long as they would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act (such as section 193 of the Act, discussed in the next section of this TSD).

Based on the detailed pollutant-by-pollutant evaluation we provide in the TSD (and summarize herein), which includes an evaluation of the incremental SIP strengthenings and relaxations in the context of pollutant emission sources, trends, air quality conditions, and planning requirements, we conclude that approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would not interfere with any applicable requirement concerning attainment and reasonable further

progress, or an other applicable requirement of the Act.

Most of the significant differences between the two NSR programs (SIP-approved versus the DAQM NSR submittal) are pollutant-specific rather than of general applicability. There are, however, two differences of general applicability that warrant discussion here: the emissions test used to define a stationary source modification and the basis for the minor (referred to as ''non-major'' under the submitted DAQM NSR program) source baseline date.

First, the DAQM NSR submittal would replace a ''potential-to-potential'' test with an ''actual-to-potential'' test for evaluating proposed stationary source modifications (*see* existing SIP section 1, ''modification'' (1.52)). As a result, the existing SIP rule fails to require NSR review for modifications at major sources, which involve a significant net emissions increase in actual emissions, but no increase in the potential to emit. In contrast, the DAQM NSR submittal provides for the more protective ''actual-to-potential'' test for evaluating proposed modifications at major sources. This would represent a general strengthening of the NSR program compared to the existing SIP NSR program. For additional Agency discussion on the relative stringency of these two different tests for determining applicability of requirements for modifications, see our final rule on recent NSR revisions at 67 FR 80186 at 80204–80206 (December 31, 2002).

Second, through the definition of ''baseline concentration'' in SIP section 1, the existing SIP established a uniform minor source baseline date of August 7, 1977 in the various PSD baseline areas (which derive from the areas designated as attainment or unclassifiable by EPA under section 107(d) of the Act) within Clark County. This definition is consistent with EPA's 1978 final PSD regulations. However, the court in the *Alabama Power* decision set aside EPA's definition (from the 1978 PSD regulations) in favor of the statutory definition of the term (*see* section 169(4) of the Act), which links the baseline concentration to the ambient concentration that exists at the time of the first PSD application in a given area. *See Alabama Power Co.* v. *Costle*, 636 F.2d 323, at 375–376 (D.C. Cir. 1979). EPA's PSD regulations have long since been revised to reflect the court's holding (*see* 40 CFR 51.166(b)(13)).

While the definition of ''baseline concentration'' in DAQM section 0 is consistent with the current EPA definition, EPA approval of this definition to supercede the SIP definition would have the effect of untriggering (completely) the minor source baseline dates for PM and SO_2 in those section 107(d) attainment or unclassifiable areas in which no source or modification has submitted a complete PSD application or would have a significant impact. Examples of such areas include Frenchman Flat (hydrographic area (HA) 160), Indian Springs Valley (HA 161), and Pahrump Valley (HA 162).

For those areas in which a source or modification has submitted a complete PSD application or would have a significant impact, EPA approval would have the effect of establishing a new minor source baseline date for PM or SO_2 or both, *i.e.,* from August 7, 1977 to various different (more recent) dates in the applicable areas. Examples include Las Vegas Valley (HA 212), which would have a new minor source baseline date for SO_2 of April 25, 1996 (triggered by a complete PSD application submitted by TIMET) and Black Mountains (HA 215), which would have a new minor source baseline date for PM of December 14, 1990 (triggered by a complete PSD application submitted by NCA #2).

Arguably, untriggering (or re-establishing new, more recent) minor source baseline dates represents a relaxation because a greater level of air quality degradation would be allowed compared to a regulatory scheme in which the baseline date and concentration is set uniformily for all areas at August 7, 1977. However, this particular type of change aligns the Clark County NSR program with the statute (*see* section 169(4) of the Act) and thus, can also be viewed as a correction rather than as a relaxation. We conclude, therefore, that approval of the DAQM NSR submittal would serve the Congressional purposes described in the *Alabama Power* decision, and that the untriggering (or re-setting) of PSD minor source baseline dates in Clark County under these circumstances would be consistent with section 110(l) of the Act. Section 110(l) prohibits interference with any applicable requirement of the Act, and in this case the SIP revision will bring the Clark County program in line with the requirements of the Act as interpreted by the court. Thus, EPA concludes that approval is consistent with section 110(l). We also note that our approval of the DAQM NSR submittal would have little practical effect on the PSD program as it is being administered currently by DAQM since DAQM has not been administering the program under the assumption that there is a uniform county-wide minor source baseline date (*i.e.,* as provided for in the existing SIP NSR program) but rather under the assumption that the minor source baseline date is triggered on an area-by-area basis by the submittal of the first complete PSD application in a given area.

Carbon Monoxide (CO). As noted previously, a sub-region within Clark County, the Las Vegas Valley (hydrographic area #212), is designated as a ''serious'' nonattainment area for the CO NAAQS. Clark County has developed and adopted a ''serious area'' attainment plan which relies primarily on the Federal motor vehicle control program, and State and local wintertime gasoline specifications (such as DAQM sections 53 (Oxygenated Gasoline Program) and 54 (Cleaner Burning Gasoline), and an ''enhanced'' motor vehicle inspection and maintenance program to demonstrate attainment of the CO NAAQS by the applicable attainment date (year 2000). We have proposed approval of this plan. See 68 FR 4141 (January 28, 2003) for our proposed approval of the Las Vegas Valley ''serious area'' CO attainment plan. The rest of the county is designated unclassifiable/attainment for the CO NAAQS. *See* 40 CFR 81.329.

Approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified *non-major* CO sources within Las Vegas Valley (*i.e.,* from LAER to BACT), but would also represent an incremental strengthening by imposing more stringent offset requirements. The offset requirements would be strengthened in two respects: the threshold for the offset requirement would be lowered to 70 tons per year (tpy) from 100 tpy and the offset ratio would be increased to 2:1 from 1:1. Given (1) that the more inclusive ''actual-to-potential test'' would replace the ''potential-to-potential'' test for evaluating source modifications; (2) that the incremental relaxation in the control technology requirement would replace the highest level of control (LAER) with the next highest (BACT) level of control and this incremental difference is offset by an incremental strengthening in the offset requirement; (3) that DAQM section 12 prohibits new or modified CO stationary sources with potentials to emit (PTEs) greater than 50 tpy in the downtown CO ''hot spot'' area; (4) that the Las Vegas Valley ''serious area'' CO attainment plan assumes growth in non-major stationary CO sources (*i.e.,* does not assume that the CO emissions from non-major sources would be offset), concludes that stationary sources are

not a significant contributor to CO levels in the valley, and does not rely on stationary source controls to demonstrate attainment; and (5) that EPA has proposed approval of the CO attainment demonstration based on on-road motor vehicle controls, we have concluded that the supercession of the existing SIP NSR program by the submitted NSR program would not interfere with the CO attainment strategy or any other applicable requirement of the Act.

Particulate Matter (PM–10). As noted previously, Las Vegas Valley (hydrographic area #212), is designated as a ''serious'' nonattainment area for the PM–10 NAAQS. Clark County has developed and adopted a ''serious area'' attainment plan which relies primarily on prohibitory rules regulating fugitive dust sources, including vehicle travel over paved and unpaved roads and construction activity, to demonstrate attainment of the PM–10 NAAQS by year 2006. We have proposed approval of this plan. See 68 FR 2954 (January 22, 2003) for our proposed approval of the Las Vegas Valley ''serious area'' PM–10 attainment plan. The rest of the county is designated on a hydrographic area basis as ''unclassifiable'' for the PM–10 NAAQS, see 40 CFR 81.329, but PM–10 NAAQS violations have been recorded in Apex Valley, which borders Las Vegas Valley to the north.

In general, approval of the DAQM NSR submittal would strengthen the SIP by updating the PM increments in terms of PM–10 (rather than total suspended particulate (TSP)). EPA replaced the PM NAAQS, measured as TSP, with new PM NAAQS, measured as PM–10, in 1987. See 52 FR 24634 (July 1, 1987). With respect to Las Vegas Valley, approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified non-major PM–10 sources (*i.e.*, from the most stringent level of control, LAER to the next highest level of control, BACT), and in the offset requirement (from ''federal'' to ''local'' offsets) for new or modified sources with PTEs from 15 tpy (as adjusted from 25 tons TSP) to 70 tpy, but it would also represent an incremental strengthening by establishing a more stringent offset ratio (2:1) to replace the current ratio (1:1). Given (1) that the more inclusive ''actual-to-potential test'' would replace the ''potential-to-potential test'' for evaluating source modifications; (2) that the offsetting effects of these changes to the NSR program would ensure a negligible effect on PM–10 emissions; (3) that the submitted NSR program conforms to that PM–10 attainment plan in that the plan assumes BACT- rather than LAER-level of control for new or modified non-major sources in Las Vegas; (4) that the Las Vegas Valley ''serious area'' PM–10 attainment plan concludes that stationary sources are not a significant contributor to PM–10 NAAQS violations in the valley, and does not rely on stationary source controls to demonstrate attainment; and (5) that EPA has proposed approval of the demonstration based on fugitive dust controls, we have concluded that the supercession of the existing SIP NSR program by the submitted NSR program would not interfere with the PM–10 attainment strategy or any other applicable requirement of the Act.

With respect to Apex Valley, the incremental relaxation in the control technology requirement (from LAER to BACT) and the elimination of any offset requirement, when viewed in isolation, could appear to potentially interfere with attainment of the PM–10 NAAQS in that area given the monitored incidence of PM–10 NAAQS violations in the area. However, EPA recognizes that Clark County is in the process of extending additional regulatory controls to existing PM–10 sources in the Apex Valley and to developing a Natural Events Action plan to address those PM–10 NAAQS violations that result from high wind events that occur there, and in that context, EPA believes that the incremental relaxation in requirements for new or modified stationary sources would not interfere with attainment of the PM–10 NAAQS in Apex Valley since the attainment strategy, by necessity, will focus on existing sources and high-wind-driven fugitive dust.

Ozone. Las Vegas Valley (hydrographic area #212) was designated as a nonattainment area for the ozone NAAQS in 1978. Pursuant to the Clean Air Act Amendments of 1977, Clark County developed and adopted the Las Vegas Valley Air Quality Implementation Plan in 1978 as an attainment plan for the ozone NAAQS. This plan was revised in 1980 and then again in 1984. The attainment strategy relied primarily on the Federal motor vehicle emission control program, the NSR program (*i.e.*, existing SIP sections 1, 11, and 15), and various stationary source prohibitory rules (including SIP sections 33, 50, 51, 52, and 60), which relate to sources of chlorine (found to be a significant ozone precursor in Las Vegas Valley) and VOC sources, such as petroleum product storage and handling. We approved these plan submittals at various times (see, *e.g.*, 51 FR 29923, August 21, 1986). Based on monitoring data documenting the necessary decrease in peak ozone concentrations, we redesignated Las Vegas Valley as ''attainment'' for the (one-hour) ozone NAAQS in 1986. See 51 FR 41788 (November 19, 1986). Since then, peak ozone levels have remained relatively constant at 0.09 parts per million (ppm) to 0.10 ppm, but peak levels in recent years have approached the one-hour standard of 0.12 ppm. The current (one-hour) ozone NAAQS designation for Clark County is unclassifiable/attainment. *See* 40 CFR 81.329.

Approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified non-major VOC sources within Las Vegas Valley (*i.e.*, from LAER to BACT), however, the DAQM NSR submittal extends LAER level of control to new or modified major VOC sources proposed for certain locations adjacent to, and generally upwind of Las Vegas Valley (*i.e.*, Eldorado Valley and Ivanpah Valley. In these adjacent areas, the applicable control technology requirement under the existing SIP NSR rules is BACT. Given that the 1980's-era ozone attainment strategy relies on several important VOC regulatory elements that would not be affected by our action on the NSR program, *e.g.*, stationary source prohibitory SIP rules (*i.e.*, SIP sections 33, 50, 51, 52, and 60) and motor vehicle tailpipe and fuel regulations promulgated by EPA under title II of the Act, and that the incremental relaxation in the control technology requirement for new or modified sources of VOC in Las Vegas Valley would replace the highest level of control (LAER) with the next highest level of control (BACT) and would be partially offset by an incremental strengthening in that requirement in upwind areas, we have concluded that the approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would not interfere with continued attainment of the one-hour ozone NAAQS or any other applicable requirement of the Act. We note that Clark County has been designated as nonattainment for the eight-hour ozone NAAQS, which EPA established in 1997 (62 FR 38856, July 19, 1997) and which will in time replace the existing (one-hour) ozone NAAQS. 69 FR 23858, 23919–23920 (April 30, 2004). Additional changes to the DAQM NSR program will be required on a schedule

to be established by EPA in a final rule implementing the eight-hour ozone NAAQS. See 69 FR 23951, 23985–23986 (April 30, 2004).

Nitrogen Dioxide (NO_2). Clark County is designated on a hydrographic area basis as unclassifiable/attainment for the NO_2 NAAQS. See 40 CFR 81.329. Ambient NO_2 concentrations are well below (approximately 50%) the applicable NAAQS.

As a general matter, approval of the DAQM NSR submittal would strengthen the SIP by establishing NO_2 PSD increments and requiring the related NO_2 PSD increment consumption analysis for new major sources or major modifications in Clark County. Within Las Vegas Valley, approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would relax the control technology requirement for new or modified sources of NO_X (from LAER to BACT), but this relaxation would be offset by the special restrictions established in DAQM section 12 for new or modified NO_X sources in the urbanized core of Las Vegas. From the standpoint of continued attainment of the NO_2 NAAQS, while the net effect (negative or positive) of these offsetting regulatory changes is difficult to predict, it would not be expected to be significant given that the relaxed control technology requirement is from the highest level of control (LAER) to the next highest level of control (BACT) rather than an elimination of the control technology requirement completely and given that, as noted above, ambient NO_2 concentrations are well below the applicable NAAQS. Thus, we have concluded that the supercession of the existing SIP NSR program by the submitted NSR program would not interfere with continued attainment of the NO_2 NAAQS or any other applicable requirement of the Act.

Sulfur Dioxide (SO_2). Clark County is designated on a hydrographic area basis as unclassifiable/attainment for the SO_2 NAAQS. *See* 40 CFR 81.329. SO_2 monitoring data collected in Las Vegas Valley in the early 1980's indicate that the highest ambient concentrations were between 5% and 22% of the respective NAAQS depending upon the averaging period. Monitoring data from year 2002 show little change in ambient SO_2 concentrations relative to conditions in the early 1980's.

Approval of the DAQM NSR submittal (and thereby replacement or supercession of the existing SIP NSR rules) would represent an incremental relaxation in the control technology requirement for new or modified SO_2 sources within Las Vegas Valley (*i.e.*, from LAER to BACT) and an incremental relaxation in the ambient SO_2 standards used in the impact analyses conducted as part of the permit application process for new or modified sources (comparing the SO_2 ambient standards in existing SIP section 11 with submitted DAQM section 11). From the standpoint of continued attainment of the SO_2 NAAQS, EPA concludes that the incremental relaxation of the control technology requirement in Las Vegas Valley for new or modified sources of SO_2 is not significant given that the relaxed requirement is from the highest level of control (LAER) to the next highest level of control (BACT) rather than an elimination of the control technology requirement completely and given that ambient SO_2 concentrations continue to be well below the applicable NAAQS. Also, NDEP has jurisdiction over one of the principal sources of SO_2 (coal-burning power plants) in Clark County, and the control technology requirements for SO_2 emissions from those sources are unaffected by this action. Finally, the incremental relaxation in SO_2 ambient air quality standards used in the permit application evaluation process is consistent with continued attainment of the NAAQS since the revised ambient standards in submitted DAQM section 11 accurately reflect the current NAAQS for SO_2. Thus, we have concluded that supercession of the existing SIP NSR program by the submitted NSR program would not interfere with continued attainment of the SO_2 NAAQS or any other applicable requirement of the Act.

Lead. EPA promulgated the NAAQS for lead (Pb) in 1978. See 43 FR 46246 (October 5, 1978). Ambient lead levels collected in Las Vegas Valley during the late 1970's were found to violate the NAAQS. To provide for the attainment and maintenance of the lead NAAQS in the valley, Clark County adopted the *State Implementation Plan Revision for Ambient Lead in Las Vegas Valley, Clark County, Nevada* (dated February 11, 1980). EPA approved this plan as a SIP revision in 1982. *See* 47 FR 28374 (June 30, 1982). This lead (Pb) attainment plan predicted attainment of the lead NAAQS prior to 1982 primarily based on the declining lead content of motor vehicle gasoline, and indeed, maximum quarterly concentrations were much less than the NAAQS by the mid-1980's.

In general, the DAQM NSR submittal represents a strengthening of the SIP with respect to lead in those portions of Clark County that lie outside of Las Vegas Valley but an incremental relaxation of the SIP within Las Vegas Valley. However, from the standpoint of continued attainment of the lead NAAQS in Las Vegas Valley, the relaxation of certain NSR requirements for new or modified stationary sources of lead (*de minimis* exemptions, a BACT control technology requirement rather than LAER, elimination of offsets) would not interfere with continued attainment of the lead NAAQS nor any other requirement of the Act because the incremental relaxation of the control technology requirement is from the highest level of control (LAER) to the next highest level of control (BACT) rather than an elimination of the control technology requirement completely and because the DAQM NSR submittal continues to ensure that permits are not issued to new or modified sources that would cause a violation of the lead NAAQS (*see* DAQM section 12, subsection 12.2.17.4(c)). Moreover, the overwhelming influence of mobile sources to the historical lead NAAQS violations, which would be unaffected by approval of the DAQM NSR submittal, and the low background lead concentrations further ensure that supercession of the existing NSR SIP program with the submitted NSR SIP program would not interfere with continued attainment of the lead NAAQS or any other requirement of the Act.

Section 193 of the Act

Section 193 of the Act, which was added by Congress in the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: ''No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' This section of the Act does not clearly apply to revisions in NSR programs, but we have evaluated the DAQM NSR submittal on the assumption that section 193 does apply. NSR program revisions are inherently difficult to evaluate with respect to changes in emissions reductions because NSR covers all types of stationary sources and provides for case-by-case evaluations of control technology requirements whether the applicable requirement is BACT or LAER (*see* 40 CFR 51.166(b)(12) and 40 CFR 51.165(a)(1)(xiii)). In the context of the DAQM NSR submittal, a determination of whether the submitted NSR program would provide for equivalent or greater

emission reductions relative to the existing SIP NSR program is further complicated by the comprehensive nature of the changes. The DAQM NSR submittal represents a wholesale revision affecting the substance, procedure, and format of the Clark County NSR program. Nevertheless, we can identify three parameters that most closely link to relative changes in emissions reductions from new or modified stationary sources: the test for evaluating source modifications, the control technology review, and the requirements for offsets, including offset thresholds, offset ratios, and the other specifications for creation and use of offsets. As explained below, relaxation in some of these parameters is offset by countervailing strengthenings in other parameters with the net result that we can conclude that the submitted NSR program will provide for equivalent or greater emissions reductions as the existing SIP NSR program (which pre-dates the 1990 Clean Air Act Amendments) for the two applicable nonattainment pollutants, CO and PM–10.

Test for Source Modifications. As noted previously, the submitted DAQM NSR program would establish the more inclusive test (''actual to potential'') for evaluating source modifications and thereby replace the existing SIP NSR program's ''potential-to-potential'' test, with the result that a greater number of source modifications would be subject to new source review and the related requirements of BACT or LAER.

Control Technology Requirements. Under the existing SIP NSR program, the highest level of control (LAER) applies to all new or modified sources of CO or PM in the nonattainment area. In contrast, under the submitted DAQM NSR program, the next highest level of control, BACT, applies to new or modified sources of CO and PM with PTEs less than 70 tpy. Under the submitted NSR program, LAER applies at 70 tpy or greater for CO and PM–10.

Offsets Requirements. Offsets requirements refer to applicable thresholds, ratios, and specifications such as whether offsets are surplus, permanent, quantifiable and federally enforceable. With respect to offset thresholds, for CO, offsets under the existing SIP NSR program apply to sources or modifications with PTEs greater than 100 tpy, whereas, under the submitted NSR program, offsets apply at 70 tpy. For PM, offsets under the existing SIP NSR program apply to sources or modifications with PTEs greater than 25 tpy (based on TSP, which is roughly equivalent to 15 tpy PM–10). The corresponding threshold under the submitted NSR program is 70 tpy of PM–10. With respect to offset ratios, for both CO and PM, the existing SIP NSR program establishes a 1:1 ratio whereas the submitted NSR program establishes a more stringent a 2:1 ratio. With respect to specific characteristics of offsets, DAQM section 59 requires that offsets be surplus, permanent, quantifiable and federally enforceable as defined in DAQM section 0. See DAQM section 59, subsection 59.4.2.1, and the related definitions in DAQM section 0. Section 15 does not have any similar requirements for offsets.

Evaluation for Carbon Monoxide. First, as noted above, the submitted program would establish the more inclusive ''actual-to-potential'' test for evaluating source modifications. Second, the submitted program would establish a lower threshold for triggering offset requirements (70 tpy under the submitted NSR program versus 100 tpy under the existing SIP NSR program), would establish a higher offset ratio (2:1 versus 1:1), and would establish the requirements for creation and use of offsets (surplus, permanent, quantifiable and federally enforceable) that ensure that emissions increases are truly offset. Thus, two of the three parameters strongly support a conclusion that the submitted program would provide equivalent or greater CO emissions reductions relative to the existing SIP NSR program.

One of the three parameters, the control technology requirement, is more stringent for non-major sources under the existing SIP NSR program than under the submitted program. The existing SIP NSR program requires LAER-level of control for non-major CO sources whereas the submitted DAQM NSR program requires BACT-level of control for such sources. The emissions reductions associated with application of LAER-level of control relative to those associated with application of BACT-level of control depend upon the type and size of proposed sources or modifications. In some instances, due to the ''top-down'' approach used in BACT analyses, which requires justification for not selecting LAER-level of control before evaluating less stringent levels of control, BACT is equivalent to LAER. This ''top-down'' approach for determining BACT is described in detail in Chapter B of EPA's *Draft New Source Review Workshop Manual* (October 1990). In most other instances, the differences in emissions limitations between the two levels of control are relatively small, particularly in relation to emissions that would otherwise result from an uncontrolled source.

Thus, we have concluded that the CO emissions increase associated with the incremental relaxation associated with the control technology requirement for non-major sources, which should be relatively minor given the small difference between emissions limitations under BACT versus LAER in most circumstances, would be more than compensated for by the more inclusive test for source modifications, the lower CO offset threshold, the higher CO offset ratio, and the establishment of other requirements for offsets that ensure that they truly offset emissions from applicable new sources or modifications.

Evaluation for Particulate Matter. As noted above, the submitted DAQM NSR program would establish the more inclusive ''actual-to-potential'' test for evaluating source modifications.

The second parameter, the control technology requirement (LAER), is more stringent for non-major sources under the existing SIP NSR program than under the submitted program (BACT). As described above for CO, however, the difference between the emissions reductions associated with application of LAER-level of control relative to those associated with application of BACT-level of control typically ranges from minor to none at all.

With respect to requirements for PM offsets, the differences between the existing SIP and submitted NSR programs are particularly difficult to evaluate. On one hand, the existing SIP NSR program has established a lower offset threshold at 25 tpy of TSP (which is roughly equivalent to 15 tpy of PM–10), compared to 70 tpy of PM–10 under the submitted program. On the other hand, the existing program has established a lower offset ratio (1:1 versus 2:1).

Moreover, the ''quality'' of the offsets under the existing program is lower than that required under the submitted program in two respects. First, unlike the submitted program, the existing SIP NSR program does not require that offsets be surplus, permanent, quantifiable and federally enforceable and thus does not ensure that increases in emissions are truly offset. Second, the existing SIP NSR program allows TSP offsets to be used to offset increases in PM emissions. Depending upon the particle size distribution of those TSP offsets, it is possible that increases in PM–10 emissions under the existing SIP NSR program would not be offset by PM–10 offsets at all. In other words, a new source that generates particulate matter that is largely or entirely of the particle size constituting PM–10 could be ''offset'' under the existing program

by another source whose PM emissions are largely or entirely of a particle size not constituting PM–10 but still constituting TSP (TSP includes particles roughly 30 microns in diameter or less). In such circumstances, the PM–10 emissions increase at the new source would be at most only partially offset since the ''offsets'' do not, or only partially, constitute PM–10. In contrast, the submitted program, while it does not require offsets for as many new sources as the existing program (due to the higher offset threshold), does require that PM–10 emissions increases be offset by PM–10 offsets, *i.e.*, where offsets are required.

In conclusion, while we recognize the significant trade-offs in emission reduction potential between the two NSR programs with respect to PM–10, we have concluded that the PM–10 emissions increase associated with the incremental relaxation associated with the control technology requirement for non-major sources and the higher offset threshold would be more than compensated for by the more inclusive test for source modifications, the higher PM–10 offset ratio, the establishment of other requirements for offsets that ensure that they truly offset emissions from applicable new sources or modifications, and the requirement to use PM–10 offsets rather than TSP offsets, only some fraction of which constitutes PM–10.

Conclusion. For the reasons set forth above, we propose to find that the submitted DAQM NSR program insures equivalent or greater emissions reductions of CO and PM–10 as compared to the existing SIP NSR program in compliance with section 193 of the Act.

Proposed Partial Approval

Pursuant to section 110(k)(3) of the Act, we propose a partial approval of the submitted NSR rules. With the exceptions listed in the following subsection of this notice, we propose approval of the submitted NSR rules, including DAQM sections 0, 11, 12, 58, and 59 and NAC 445B.22083, based on our determination that the rules comply with applicable statutory and regulatory provisions requiring regulation of stationary sources in general and requiring permit programs for major stationary sources in particular, including section 110(a)(2)(C) and parts C and D of title I of the Act. In support of this recommendation, we have concluded that our approval of the submitted NSR rules (and thereby replacement or supercession of the existing SIP NSR rules), *i.e.*, with the partial exception for certain definitions in existing SIP section 1, complies with section 110(l) of the Act because the untriggering (or re-setting) of the minor source baseline dates for PM and SO_2 would be consistent with the statutory purpose of linking such dates with collection of actual air quality data and because the relaxation of certain control technology and offset requirements would not interfere with the strategy for attainment of the CO and PM–10 NAAQS in Las Vegas Valley or the continued attainment of the other NAAQS in Clark County.

Proposed Partial Disapproval

We are also proposing a partial disapproval of the DAQM NSR submittal. A discussion of the individual subsections of the submittal that we are proposing to disapprove is provided in the following paragraphs.

1. We propose to disapprove submitted DAQM section 12, subsections 12.2.18 (HAP sources in Clark County) and 12.2.20 (Additional Requirements for Stationary Sources with Beryllium, Mercury, Vinyl Chloride, or Asbestos Emissions in Clark County) to avoid potential confusion or conflict with the Federal NESHAPS/MACT regulatory program. Regulations governing hazardous air pollutant (HAP) emissions are generally not appropriate for incorporation into SIPs, which are intended under the Act to assure attainment and maintenance of the criteria air pollutants.

2. We propose to disapprove DAQM section 52, subsection 52.8 (Section 52 Offset Program), because it cannot be evaluated properly in the absence of a SIP submittal of the entire rule (section 52). DAQM revised subsection 52.8 to clarify the date when the emission reduction credit program will expire, but the emission reduction credit program is not a part of existing SIP section 52, different portions of which were approved by EPA in 1981 (*see* 46 FR 21758, April 14, 1981) and in 1982 (*see* 47 FR 26386, June 18, 1982). Thus, consideration of this latest revision should be conducted only as part of an evaluation of the entire rule (*i.e.*, DAQM section 52).

A partial disapproval is appropriate in this instance given the explanation provided above and given that these three subsections (*i.e.*, DAQM section 12, subsections 12.2.18 and 12.2.20, and DAQM section 52, subsection 52.8) are easily severable from the overall NSR submittal.

Recommendations for Improvements to DAQM NSR Rules

The TSD describes rule deficiencies that do not preclude full approval of the DAQM NSR submittal but are recommended for the next time DAQM modifies the rules. These recommendations relate to such topics as use of consistent terms, greater coordination with NDEP concerning increment consumption, and consideration of any analysis of the impact of a major source or major modification on air quality related values in Class I areas provided by a Federal Land Manager or other Federal official during the permit application review period and provision of an explanation in the public notice in those instances which DAQM disagrees with a finding of such Federal official.

II. Corrections to, or Clarification of, the Clark County Portion of Nevada State Implementation Plan

In pertinent part, section 110(k)(6) of the Act provides that whenever EPA determines that the EPA action approving, disapproving, or promulgating any plan or plan revision (or part thereof) was in error, EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public. The EPA interprets this provision to authorize the Agency to make corrections to an approval, disapproval, or promulgation of a SIP revision when it is shown to EPA's satisfaction that an error occurred in failing to consider or inappropriately considering information available to EPA at the time of the approval, disapproval, or promulgation, or the information made available at the time of approval, disapproval, or promulgation is subsequently demonstrated to have been clearly inadequate.

Over the years, EPA has taken numerous actions on revisions to the Clark County portion of the Nevada SIP. In the process, EPA has made certain errors, or took certain actions that warrant clarification, which are the subject of this proposed action. Each proposed correction or clarification is summarized below. The TSD for this proposed action provides additional discussion of these rules.

SIP section 1, subsections 1.79, Significant Source of Total Chlorides, and 1.94, Total Chlorides. In the preamble to our final rule approving these defined terms into the SIP (46 FR 43141; August 27, 1981), we said that we were taking no action on these two subsections, but then we proceeded to codify them in the ''Identification of plan'' section of 40 CFR part 52, subpart

DD (Nevada). As a result, we inadvertently approved these two subsections of local rule, SIP section 1 (Definitions), into the Clark County portion of the Nevada SIP. We are proposing now to delete these terms from the SIP and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

Former SIP section 12, Upset, Breakdown, or Scheduled Maintenance. EPA originally approved this rule into the SIP in 1973. *See* 38 FR 12702 (May 14, 1973). In 1981, we reversed course and disapproved it and codified this disapproval by amending 40 CFR part 52, section 1478 (then entitled ''Rules and Regulations''). See 46 FR 43141 (August 27, 1981). Subsequently, Clark County renumbered its air pollution regulations and submitted a local rule (section) 25 also entitled ''Upset, Breakdown, or Scheduled Maintenance,'' which we disapproved in 1984. See 49 FR 10259 (March 20, 1984). In that 1984 final rule, we codified our disapproval of submitted section 25 by amending 40 CFR 52.1483, but we also removed and reserved 40 CFR 52.1478 which had included the 1981 disapproval language related to section 12 (Upset, Breakdown, or Scheduled Maintenance). (Note that 40 CFR 52.1478 has subsequently been renamed ''Extensions.'') The end result of this sequence of rulemaking is that, while section 12 (Upset, Breakdown, or Scheduled Maintenance), originally approved by EPA in 1973, is no longer approved into the Nevada SIP (ever since disapproval action in 1981), the current codification of the Nevada SIP in subpart DD (Nevada) of 40 CFR part 52 is not clear on this point. Therefore, we are proposing to clarify the status of former SIP (now disapproved) section 12 (Upset, Breakdown, or Scheduled Maintenance), as submitted on January 19, 1973, by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

SIP Section 15, Prohibition of Nuisance Conditions. EPA approved this rule into the Nevada SIP in 1973. See 38 FR 12702 (May 14, 1973). Clark County later renumbered its air quality regulations, and we subsequently approved a new local rule (section) 15 (Source Registration) into the SIP. That new SIP section 15 (Source Registration) had nothing to do with general nuisance conditions and thus did not supercede the old SIP rule 15 (Prohibition of Nuisance Conditions) in the Nevada SIP. However, general nuisance rules, such as SIP section 15 (Prohibition of Nuisance Conditions) are not appropriate for inclusion in SIPs, because they are not specifically directed at the attainment and maintenance of the NAAQS, and therefore, we are proposing to delete section 15 (Prohibition of Nuisance Conditions) from the SIP and to codify this deletion by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

Disapproved section 25, subsection 25.1, untitled, but related to upset, breakdown or scheduled maintenance. In 1981, we disapproved this rule, which had been submitted to us on July 24, 1979. *See* 46 FR 43141 (August 27, 1981). Through that 1981 action, we listed this rule in the ''Identification of plan'' section of 40 CFR part 52, subpart DD (Nevada) but canceled out the apparent approval by codifying the corresponding disapproval in 40 CFR 52.1478. In 1984, we disapproved an amended version of local Clark County rule, section 25 (Upset, Breakdown, or Scheduled Maintenance), which had been submitted to us on November 17, 1981. *See* 49 FR 10259 (March 20, 1984). In the 1984 action, we codified our disapproval of section 25 (Upset, Breakdown, or Scheduled Maintenance), submitted on November 17, 1981, by amending 40 CFR 52.1483, but we also removed and reserved 40 CFR 52.1478 (then entitled ''Rules and Regulations''), which had included the 1981 disapproval language related to section 25, subsection 25.2, as submitted on July 24, 1979. By removing the disapproval language but retaining the listing of section 25, subsection 25.1, in the ''Identification of plan'' section of 40 CFR part 52, subpart DD (Nevada), we have inadvertently caused potential confusion as to the status of this particular rule with respect to the Nevada SIP. To eliminate this confusion, we are proposing to delete the listing of section 25, subsection 25.1 (untitled, but related to upset, breakdown or scheduled maintenance), by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

SIP section 29 (Odors in the Ambient Air). EPA originally approved this rule into the SIP in 1973. *See* 38 FR 12702 (May 14, 1973). Clark County later renumbered its air pollution regulations, and we subsequently approved a new local rule (section) 29 (Sulfur Content in Fuel Oil) into the SIP. *See* 46 FR 43141 (August 27, 1981). The new SIP section 29 (Sulfur Content in Fuel Oil) was completely different than the old SIP section 29 (Odors in the Ambient Air) and thus did not supercede it, nor have we taken specific action to delete the old SIP section 29 (Odors in the Ambient Air) from the Nevada SIP. Thus, section 29 (Odors in the Ambient Air), submitted on January 19, 1973, remains in the Nevada SIP. Odor nuisance rules are generally not appropriate for inclusion in the SIP, because they are not specifically directed at the attainment and maintenance of the NAAQS. Therefore, we are proposing to delete section 29 (Odors in the Ambient Air), submitted on January 19, 1973, from the Nevada SIP and to codify the deletion by revising the appropriate paragraph under 40 CFR part 52, subpart DD (Nevada), section 1470 (Identification of plan).

SIP section 33, Chlorine in Chemical Processes. This local rule was adopted on May 18, 1984, and was included in the *Las Vegas Valley Air Quality Implementation Plan, Post 1982 Update for Ozone,* which was adopted by Clark County on October 16, 1984, submitted by NDEP on January 11, 1985, and approved by EPA as a SIP revision on August 21, 1986 (51 FR 29923). The codification of our approval of the post-1982 ozone plan, however, does not provide a separate listing of section 33, which could result in confusion as to the status of that rule with respect to the SIP. See 40 CFR 52.1470(c)(33). To clarify its status as an approved part of the Nevada SIP, we are proposing to revise 40 CFR 52.1470(c)(33) to provide for a specific listing for section 33 (Chlorine in Chemical Processes).

SIP section 40, subsection 40.1, Prohibition of Nuisance Conditions; SIP section 42, subsection 42.2, untitled but related to nuisance from open burning; and SIP section 43, subsection 43.1, Odors in the Ambient Air. These three rules were submitted to EPA on July 24, 1979. In 1981, we took final action on the portion of the July 24, 1979 submittal that included these three rules. *See* 46 FR 43141 (August 27, 1981). In that rulemaking, we indicated that we were taking no action on the three rules, but we inadvertently listed them as approved into the SIP. See 40 CFR 52.1470(c)(16)(viii). Therefore, we are proposing to revise 40 CFR 52.1470(c)(16)(viii) to delete SIP section 40, subsection 40.1 (Prohibition of Nuisance Conditions), SIP section 42, subsection 42.2 (untitled but related to nuisance from open burning), and SIP section 43, subsection 43.1 (Odors in the Ambient Air), submitted on July 24, 1979, from the Nevada SIP.

Conclusion. EPA has reviewed the rules described above and determined that they were previously approved in

error into the Clark County portion of the Nevada SIP (SIP sections 1.79, 1.94, 15, 29, 40.1, 42.2, and 43.1), or were previously disapproved but not clearly identified as such in the CFR (former SIP section 12 and disapproved submitted section 25.1), or were not clearly listed as approved (SIP section 33). Deletion of those rules approved in error into the SIP will not relax the applicable SIP and is consistent with the Act. Therefore, EPA is proposing to delete them and to clarify the status of the other listed rules under section 110(k)(6) of the Act, which provides EPA with the authority to take these actions without additional State submission.

III. Proposed Action and Public Comment

As authorized under section 110(k)(3) of the Act, EPA is proposing a partial approval and partial disapproval of the revised Clark County NSR rules into the Nevada SIP. We are proposing to approve submitted DAQM sections 0, 11, 12 (except subsections 12.2.18 and 12.2.20), 58, and 59 and submitted State regulation NAC 445B.22083. We are proposing to disapprove submitted DAQM section 12, subsections 12.2.18 and 12.2.20, and submitted DAQM section 52, subsection 52.8.

If finalized, this action would incorporate those provisions of the submitted rules that we are approving into the SIP and would not incorporate those provisions that we are disapproving. Also, if finalized as proposed, the submitted rules will supercede the existing SIP rules that provide for permitting of new or modified stationary sources in Clark County, including all of existing SIP sections 11 and 15, as well as most of the defined terms in existing SIP section 1, and will withdraw EPA's nonattainment area visibility FIP authority as it relates to new source review by DAQM in Clark County (see 40 CFR 52.1488(b)). If this partial disapproval is finalized, sanctions will not be imposed under section 179 of the Act because the provisions that we are proposing to disapprove are not required SIP submissions.

With respect to the two local rules entitled ''Definitions,'' if we finalize this action as proposed, we would approve submitted DAQM section 0 (Definitions) in its entirety, including those terms not directly related to NSR, but we would retain 33 defined terms from SIP section 1 (Definitions) because there are no equivalent, corresponding terms and definitions in DAQM section 0, and thus, these terms may be needed for existing SIP rules unaffected by this action. The 33 defined terms from SIP section 1 to be retained include: Affected Facility (1.1), Air Contaminant (1.3), Air Pollution Control Committee (1.6), Area Source (1.11), Atmosphere (1.12), Board (1.16), Commercial Off-Road Vehicle Racing (1.23), Dust (1.26), Existing Facility (1.28), Existing Gasoline Station (1.29), Fixed Capital Cost (1.30), Fumes (1.36), Health District (1.40), Hearing Board (1.41), Integrated Sampling (1.44), Minor Source (1.50), Mist (1.51), New Gasoline Station (1.57), New Source (1.58), NIC (1.60), Point Source (1.70), Shutdown (1.78), Significant (unnumbered), Single Source (1.81), Smoke (1.83), Source of Air Contaminant (1.84), Special Mobile Equipment (1.85), Standard Commercial Equipment (1.87), Standard Conditions (1.88), Start Up (1.89), Stop Order (1.91), Uncombined Water (1.95), and Vapor Disposal System (1.97). The TSD provides additional information on the proposed partial supercession of existing SIP section 1.

Second, in recognition of the vacature of our approval of previous versions of the Clark County NSR rules in *Hall* v. *EPA,* we propose to delete 40 CFR 52.1470(c)(36) and (37).

Third, under section 110(k)(6), we are proposing to correct certain provisions of the Clark County portion of the Nevada SIP that were incorporated into the SIP in error and to revise certain provisions of the Clark County portion of the Nevada SIP that warrant clarification. Specifically, we are proposing to delete SIP section 1, subsections 1.79 (Significant source of total chlorides'') and 1.94 (Total Chlorides); SIP section 15 (Prohibition of Nuisance Conditions); SIP section 29 (Odors in the Ambient Air); SIP section 40, subsection 40.1 (Prohibition of Nuisance Conditions); SIP section 42, subsection 42.2 (untitled but related to nuisance from open burning); and SIP section 43, subsection 43.1 (Odors in the Ambient Air), from the appropriate paragraphs of section 1470 (''Identification of plan'') of 40 CFR part 52, subpart DD (Nevada). If finalized as proposed, this action will delete these rules from the federally enforceable SIP. We are also proposing to revise the appropriate paragraphs in 40 CFR 52.1470 to clarify that former SIP section 12 (Upset, Breakdown, or Scheduled Maintenance) and submitted section 25.1 (untitled, but related to upset, breakdown, or scheduled maintenance) have been disapproved and are not approved into the Nevada SIP, and to clarify that SIP section 33 (Chlorine in Chemical Processes) was, and continues to be, approved into the Nevada SIP as part of our approval of the overall post-1982 ozone plan for Las Vegas Valley.

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. EPA will consider any written comments received by July 2, 2004.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Dated: May 24, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[OW–2003–0067; FRL–7669–1]

RIN 2040–AE62

National Primary Drinking Water Regulations: Analytical Method for Uranium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the use of three additional analytical methods for compliance determinations of uranium in drinking water. Each of these methods use an inductively coupled plasma mass spectrometry (ICP–MS) technology that has gained wide acceptance in the analytical community. EPA believes that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies previously approved in the December 2000 Radionuclides Rule. (65 FR 76708) This proposed rule does not withdraw approval of any previously approved monitoring methods for uranium.

In the ''Rules and Regulations'' section of the **Federal Register**, we are approving National Primary Drinking Water Regulations: Analytical Method for Uranium as a direct final rule without prior proposal because we view this as a noncontroversial rulemaking and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Through this proposal, EPA requests comment on whether approval of the ICP–MS methods published by EPA, American Society for Testing and Materials International (ASTM), and the Standard Methods Committee (EPA 200.8, ASTM D5673–03, and SM 3125), is appropriate for compliance determinations of uranium in drinking water only. Readers should please note that EPA is not requesting comment on any other use of these three ICP–MS methods, use of any other ICP–MS method, or any issue associated with the uranium standard or its implementation, and EPA will not respond to any comments other than those concerning the approval of these specific methods (as cited) for compliance determinations of uranium in drinking water. Today's action does not affect approval of the 15 methods currently approved for compliance monitoring of uranium.

DATES: Comments must be received on or before July 2, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OW–2003–0067, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *OW-Docket@epa.gov*.
- Mail: OW Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of 4 copies.
- Hand Delivery: OW Docket, EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OW–2003–0067. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OW Docket, EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: General Information—Lisa Christ, Office of Ground Water and Drinking Water, Mailcode: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564–8354; e-mail address: *christ.lisa@epa.gov*, Technical information—David Huber, Office of Ground Water and Drinking Water, Mailcode: 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC, 20460; telephone number: (202) 564–4878; e-mail address: *huber.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Entities potentially regulated by this regulation are public water systems that are classified as community water systems (CWSs). A community water system (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities	NAICS[1]
Industry	Privately-owned community water systems	221310
State, Tribal, Local, and Federal Government	Publicly-owned community water systems	924110

[1] National American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.66 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What Is EPA's Statutory Authority and Background for This Proposed Rule?

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (SDWA section 1412 (42 U.S.C. 300g–1)). NPDWRs apply to public water systems pursuant to SDWA section 1401 (42 U.S.C. 300f(1)(A)). According to SDWA section 1401(1)(D), NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including accepted methods for quality control and testing procedures.'' In addition, SDWA section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA, as well as the general rulemaking authority in SDWA section 1450(a), (42 U.S.C. 300j–9(a)). As discussed earlier in part I.A of this preamble, the action proposed herein would affect CWSs. CWSs are a subset of public water systems. (40 CFR 141.2).

On December 7, 2000 (65 FR 76708), EPA published a final Radionuclides Rule in the **Federal Register** that included monitoring requirements and a MCL of 30 micrograms per liter (30 μg/L) for uranium that took effect in December 2003. In the preamble to the December 2000 rule, EPA noted that several commenters asked EPA to consider the approval of compliance monitoring methods that use an inductively coupled plasma mass spectrometry (ICP–MS) technology. (65 FR 76724) These commenters suggested that ICP–MS analytical methods could be more cost-effective, less labor-intensive or more sensitive than some of the technologies approved in the December 2000 rule. In response to these comments, EPA stated that the Agency was reviewing ICP–MS technology for possible proposal in a future rulemaking. EPA has completed this review and in today's proposed rule is proposing approval of three methods that use ICP–MS technology. The methods are equivalent and published by EPA, ASTM International, and the Standard Methods (SM) Committee. The methods are EPA 200.8, ASTM D5673–03, and SM 3125.

III. What is EPA Doing Today?

EPA is proposing to approve the use of the ICP–MS methods published by EPA, ASTM International, and the Standard Methods Committee (EPA 200.8, ASTM D5673–03, and SM 3125) for compliance determinations of uranium in drinking water. For further information regarding these methods, please see the information provided in the direct final action located in the ''Rules and Regulations'' section of this **Federal Register** publication.

For the various statutes and executive orders that require findings for rule making, EPA incorporates the findings from the direct final rule into this companion proposal for the purpose of providing public notice and opportunity for comment.

IV. Summary of ICP–MS Technology

EPA reviewed ICP–MS methods published by EPA, ASTM International, and the Standard Methods Committee. In each of these methods, sample material in solution is introduced by pneumatic nebulization into a radiofrequency plasma where energy transfer processes cause desolvation, atomization and ionization. The ions are extracted from the plasma through a differentially pumped vacuum interface and separated on the basis of their mass-to-charge ratio by a quadrupole mass spectrometer having a minimum resolution capability of one atomic mass unit peak width at five percent peak height. The ions transmitted through the quadrupole are detected by an electron multiplier or Faraday detector and the ion information processed by a data handling system. The sensitivity of each ICP–MS method for compliance

determinations of uranium in drinking water is acceptable and is sensitive enough to detect at less than one part per billion (1 ug/L). The uranium MCL is 30 ug/L.

EPA reviewed each of these methods for performance and applicability to compliance determinations of uranium in drinking water. Three of these methods, EPA 200.8, ASTM D5673–03, and SM 3125, have acceptable performance and are otherwise suitable for compliance determinations of uranium in drinking water. Method EPA 200.8 was published by EPA in 1994; method ASTM D5673–03 was published by ASTM International in 2003; and SM 3125 was published by the Standard Methods Committee in 1998. In today's proposed rule, EPA is proposing the use of these ICP–MS methods for compliance determinations of uranium in drinking water.

EPA is not, in today's proposed rule, proposing the use of these methods for any other purposes. EPA notes that EPA 200.8 was approved for compliance determinations of several regulated metals in drinking water on December 5, 1994. (59 FR 62456) EPA also recognizes that the other two ICP–MS methods proposed through today's action for determination of other uranium may also be applicable to monitoring for other drinking water contaminants. Although the analytical scope of ASTM D5673–03 and SM 3125 extends beyond uranium, these two methods were not published until 2003 and 1998, respectively. In a later rulemaking, EPA may consider extending the use of ASTM D5673–03 and SM 3125 to compliance determinations of other regulated metals.

Like flourometric and laser phosphorimetry methods, ICP–MS measures uranium mass only; therefore all caveats discussed in the December 2000 Radionuclides Rule on using mass methods to determine contributions to gross alpha also apply. (65 FR 76724)

Today's proposed rule does not affect approval of the 15 methods currently specified at 40 CFR 141.25(a) for compliance determinations of uranium.

V. Statutory and Executive Order Reviews

For the Statutory and Executive Order reviews see the parallel direct final rule found elsewhere in today's **Federal Register**.

List of Subjects for 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: May 24, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as found in the parallel direct final rule found elsewhere in today's **Federal Register**.

[FR Doc. 04–12300 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7592]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in meters (MSL) ÷Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
KENTUCKY Bullitt County				
Brooks Run	At the confluence with Floyds Fork	None	•454	Bullitt County (Unincorporated Areas), City of Fox Chase, City of Hillview, City of Pioneer Village.
	Approximately 200 feet upstream of State Route 1020.	None	•515	
Brier Creek	A ponding area extending from the confluence with Pond Creek to approximately 1,520 feet upstream of the Railroad.	None	•431	Bullitt County (Unincorporated Areas).
Bullitt Lick Creek—Mud Run.	At the confluence with Salt River	None	•447	Bullitt County (Unincorporated Areas), City of Shepherdsville.
	Approximately 565 feet upstream of Blue Lick Creek Road.	None	•447	
Crooked Creek	Approximately 3.8 miles upstream of the confluence with Rolling Fork.	None	•430	Bullitt County (Unincorporated Areas), City of Lebanon Junction.
	Approximately 1,100 feet upstream of East Parallel Road.	None	•472	
Floyds Fork	At the confluence of Salt River	•451	•450	Bullitt County (Unincorporated Areas), City of Hillview, City of Shepherdsville.
	Approximately 3.3 miles upstream of State Highway 44.	None	•454	
Floyds Fork	At the confluence with Salt River	•451	•450	Bullitt County (Unincorporated Areas), City of Shepherdsville.
	Approximately 3.3 miles upstream of State Highway 44.	None	•454	
Knob Creek	At the confluence with Pond Creek	None	•431	Bullitt County (Unincorporated Areas).
	Approximately 2.29 miles upstream of Highway 44.	None	•456	
Knob Creek Tributary	At the confluence with Knob Creek	None	•444	Bullitt County (Unincorporated Areas).
	Approximately 1 mile upstream from Shoffet Lane.	None	•494	
Long Lick Creek	At the confluence with Salt River	None	•446	Bullitt County (Unincorporated Areas).
	Approximately 4,100 feet upstream of Happy Hallow Road.	None	•487	
Ohio River	At the confluence of Salt River	None	•443	Bullitt County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence of Salt River.	None	•443	
Pond Creek	A ponding area extending from the pump station to the confluence of Brier Creek.	None	•431	Bullitt County (Unincorporated Areas).
Salt River	At the confluence of Bullitt Lick Creek	None	•447	Bullitt County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of Bullitt Creek.	None	•447	
Whittaker Run	At the confluence with Salt River	None	•461	Bullitt County (Unincorporated Areas).
	Approximately 700 feet upstream of U.S. Route 31 East.	None	•490	

Bullitt County (Unincorporated Areas)

Maps available for inspection at the Bullitt County Planning Commission, 214 Frank E. Simon Avenue, Shepherdsville, Kentucky.

Send comments to The Honorable Kenneth Rigdon, Bullitt County Judge/Executive, County Courthouse, P.O. Box 768, Shepherdsville, Kentucky 40165.

City of Fox Chase

Maps available for inspection at the Fox Chase City Hall, 4814 Fox Chase Drive, Shepherdsville, Kentucky.

Send comments to The Honorable Joe E. Laswell, Mayor of the City of Fox Chase, 4814 Fox Chase Drive, Shepherdsville, Kentucky 40161.

City of Hillview

Maps available for inspection at the Hillview City Hall, 298 Prairie Drive, Louisville, Kentucky.

Send comments to The Honorable Leemon Powell, Mayor of the City of Hillview, 298 Prairie Drive, Louisville, Kentucky 40229.

City of Lebanon Junction

Maps available for inspection at the Lebanon Junction City Hall, 271 Main Street, Lebanon Junction, Kentucky.

Send comments to The Honorable George Halk, Mayor of the City of Lebanon Junction, P.O. Box 69, Lebanon Junction, Kentucky 40150.

City of Pioneer Village

Maps available for inspection at the Pioneer Village City Hall, 4700 Summitt Drive, Louisville, Kentucky.

Send comments to The Honorable Gary Hatcher, Mayor of the City of Pioneer Village, 4700 Summitt Drive, Louisville, Kentucky 40229.

City of Shepherdsville

Source of flooding	Location	#Depth in feet above ground. *Elevation in meters (MSL) ÷Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Maps available for inspection at the Shepherdsville City Hall, 170 Frank E. Simon Avenue, Shepherdsville, Kentucky.				
Send comments to The Honorable Joseph Sohm, Mayor of the City of Shepherdsville, P.O. Box 400, Shepherdsville, Kentucky 40165.				
MINNESOTA				
City of Minneapolis (Hennepin County)				
Mississippi River	Approximately 2,100 feet downstream of confluence of Minnehaha Creek.	None	*714	City of Minneapolis.
	Downstream of Lock and Dam No. 1	*717	*716	
Minnehaha Creek	At confluence with Mississippi River	*717	*715	City of Minneapolis.
	Approximately 2,450 feet upstream of confluence with the Mississippi River.	*717	*715	
City of Minneapolis				
Maps available for inspection at the Minneapolis City Hall, Public Works Office, 350 South Fifth Street, Minneapolis, Minnesota.				
Send comments to the Honorable R. T. Rybak, Mayor of the City of Minneapolis, 350 South Fifth Street, Room 331, Minneapolis, Minnesota 55415.				
PUERTO RICO				
Commonwealth and Municipalities				
Rio Guamani	Approximately 100 meters above the mouth of Caribbean Sea.	*3.0	*3.2	Commonwealth of Puerto Rico.
	Approximately 0.60 kilometers upstream of Puerto Rico Route 10.	None	*154.4	
Rio de Bayamon	Approximately 100 meters downstream of Puerto Rico Route 2.	*10.8	*10.7	Commonwealth of Puerto Rico, Municipality of Bayamon.
	Approximately 9.5 kilometers upstream of Puerto Rico Route 174.	None	*250.6	
Rio de La Plata (Toa Baja).	Approximately 0.1 kilometer above the confluence with Atlantic Ocean.	*2.6	*3.3	Commonwealth of Puerto Rico.
	Approximately 0.1 kilometer downstream of Puerto Rico Route 2.	*11.5	*13.1	
Rio Nigua	Approximately 400 meters upstream of mouth of Rio Nigua.	*3.4	*3.2	Commonwealth of Puerto Rico.
	Approximately 2.70 kilometers upstream of Puerto Rico Route 52.	*48.2	*49.5	
Rio Coamo	Approximately 2.16 kilometers downstream of Puerto Rico Route 1.	*2.9	*3.0	Commonwealth of Puerto Rico.
	Approximately 2.15 kilometers upstream of Puerto Rico Route 1.	None	*20.1	
Rio de La Plata (Toa Alta).	Approximately 0.1 kilometer downstream of Puerto Rico Route 2.	*11.5	*13.1	Commonwealth of Puerto Rico.
	Approximately 0.3 kilometer upstream of Puerto Rico Route 824.	None	*22.0	
Rio de La Plata: Overflow.	Approximately 0.79 kilometer downstream of the road to Military Reservation.	*2.2	*2.3	Commonwealth of Puerto Rico.
	Approximately 0.45 kilometer upstream of Puerto Rico Route 854.	*7.1	*6.7	
Rio Grande	At the confluence with Espiritu Santo River	*2.8	*5.0	Commonwealth of Puerto Rico.
	At the Puerto Rico Route 3	*3.5	*6.9	
Commonwealth of Puerto Rico				
Maps available for inspection at the Puerto Rico Planning Board, Minilas Government Center, North Building, East Diego Avenue, Stop 22, San Juan, Puerto Rico.				
Send comments to Mr. Angel D. Rodriguez, Chairperson of the Puerto Rico Planning Board, P.O. Box 41119, San Juan, Puerto Rico 00940–1119.				
Municipality of Bayamon				

Source of flooding	Location	#Depth in feet above ground. *Elevation in meters (MSL) ÷Elevation in feet (NAVD)		Communities affected
		Existing	Modified	

Maps available for inspection at Carretera #2, Alcaldia de Bayamon, 4to piso Oficina de Ordenacion Territorial, Bayamon, Puerto Rico.

Send comments to The Honorable Ramon Luis Rivera, Mayor of the Municipality of Bayamon, Carretera #2, Alcaldia de Bayamon, Bayamon, Puerto Rico 00731.

NORTH CAROLINA

Durham County (Unincorporated Areas)

The proposed, proposed modified Base (1% annual chance) Flood Elevations (BFEs), and the location of the local map repository for the unincorporated areas of Durham County have been provided on FEMA's Flood Hazard Mapping Web site at *http://www.fema.gov/fhm/st_hot.sht.* Contact the FEMA Map Assistance Center toll free at 1–877–FEMA Map (877–336–2627) for further information or a copy of the BFEs.

NORTH CAROLINA

City of Durham, Durham County

The proposed, proposed modified Base (1% annual chance) Flood Elevations (BFEs), and the location of the local map repository for the City of Durham have been provided on FEMA's Flood Hazard Mapping Web site at *http://www.fema.gov/fhm/st_hot.sht.* Contact the FEMA Map Assistance Center toll free at 1–877–FEMA Map (877–336–2627) for further information or a copy of the BFEs.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 26, 2004.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–12371 Filed 6–1–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI25

Endangered and Threatened Wildlife and Plants; Determinations of Prudency of Critical Habitat Designation for Two Mammal and Four Bird Species in Guam and the Commonwealth of the Northern Mariana Islands; Designations of Critical Habitat for One Mammal and Two Bird Species in Guam and the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the reopening of the public comment period for the proposed rule to designate critical habitat for the Mariana fruit bat and the Guam Micronesian kingfisher on Guam, and the Mariana crow on Guam and Rota. We have received a proposed natural resource management plan from Guam since the close of the comment period, and the comment period is reopened to allow additional time for all interested parties to consider this information and submit written comments on the Guam proposal. Comments already submitted on the proposed rule need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on July 19, 2004. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and information should be submitted to the Acting Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Assistant Field Supervisor, at the above address (telephone 808/792–9400; facsimile 808/792–9580).

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2002, we proposed designating critical habitat on approximately 10,053 hectares (ha) (24,840 acres (ac)) in two units on the island of Guam for the Mariana fruit bat (*Pteropus mariannus mariannus*) and the Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*) (67 FR 63738). For the Mariana crow (*Corvus kubaryi*), we proposed designating critical habitat on approximately 9,325 ha (23,042 ac) in two units on the island of Guam and approximately 2,462 ha (6,084 ac) in one unit on the island of Rota in the Commonwealth of the Northern Mariana Islands. On Guam, the boundaries of the proposed critical habitat units for the Mariana fruit bat and Guam Micronesian kingfisher are identical, and the boundaries of the proposed critical habitat for the Mariana crow are contained within these boundaries. On Rota, critical habitat is proposed only for the Mariana crow. For locations of these proposed units and additional information, please see the proposed rule (67 FR 63738).

The original comment period for the proposed rule closed on December 16, 2002. On December 5, 2002, we published a notice in the **Federal Register** announcing an extension of the public comment period to January 6, 2003, and the availability of the draft economic analysis for the proposed designation of critical habitat (67 FR 72407). On January 28, 2003, we published a notice to reopen the comment period until February 18, 2003, due to hardships caused by Supertyphoon Pongsona on Guam and Rota (68 FR 4159). On May 30, 2003, the Government of Guam filed a motion to extend the court-ordered deadline for completing the critical habitat process to allow time to develop an alternative to critical habitat designation on Guam. On June 13, 2003, the Federal District Court for Guam extended the deadline for publication ''indefinitely,'' and set a status conference for October 7, 2003. On June 23, 2003, the Plaintiffs filed a notice of appeal to the 9th Circuit from the District Court's June 13, 2003, order. On October 7, 2003, the District Court held a status conference in which the Government of Guam requested a continuance of one month. On October 16, 2003, the Guam District Court

denied the request for further continuance and ruled that it would take no further action while the case was on appeal. On January 7, 2004, the U.S. Court of Appeals for the Ninth Circuit dismissed the appeal and returned the case to the District Court.

Public Comments Solicited

Since the close of the comment period, we have received new information in the form of a proposed natural resource management plan (copy available upon request) from the Government of Guam. The comment period is reopened to allow additional time for all interested parties to consider the information and submit written comments on the proposal. In particular, we are interested in comments addressing the extent to which the proposed Guam plan would provide conservation benefits for the proposed critical habitat area, the comparative costs, or other impacts of Guam's proposal and the proposed critical habitat, and whether or not Guam's proposal would provide a basis for excluding areas from final critical habitat designation pursuant to sections 4(b)(2) or 3(5)(A) of the Endangered Species Act.

We will accept written comments and information received during this reopened comment period. If you wish to comment, you may send or hand-deliver written comments and information to the Acting Field Supervisor (*see* **ADDRESSES** section).

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section). Copies of the proposed rule are available on the Internet at *http://pacificislands.fws.gov* or by request from the Acting Field Supervisor at the address above (*see* **ADDRESSES** section), by phone at 808/792–9400, or by facsimile at 808/792–9581.

Author

The primary author of this notice is Fred Amidon, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 25, 2004.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–12432 Filed 6–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI92

Migratory Bird Permits; Take of Migratory Birds by Department of Defense

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, or possessing of migratory birds unless permitted by regulations promulgated by the Secretary of the Interior. While some courts have held that the MBTA does not apply to Federal agencies, in July 2000, the United States Court of Appeals for the District of Columbia Circuit ruled that the prohibitions of the MBTA do apply to Federal agencies, and that a Federal agency's taking and killing of migratory birds without a permit violated the MBTA. On March 13, 2002, the United States District Court for the District of Columbia ruled that military training exercises of the Department of the Navy that incidentally take migratory birds without a permit violate the MBTA.

On December 2, 2002, the President signed the 2003 National Defense Authorization Act. Section 315 of the Authorization Act provides that, not later than one year after its enactment, the Secretary of the Interior (Secretary) shall exercise her authority under section 704(a) of the MBTA to prescribe regulations to exempt the Armed Forces for the incidental taking of migratory birds during military readiness activities authorized by the Secretary of Defense or the Secretary of the military department concerned. The Authorization Act further requires the Secretary to promulgate such regulations with the concurrence of the Secretary of Defense. This proposed rule has been developed in coordination and cooperation with the Department of Defense and the Secretary of Defense concurs with the requirements herein.

Current regulations authorize permits for take of migratory birds for activities such as scientific research, education, and depredation control. However, these regulations do not expressly address the issuance of permits for incidental take. As directed by section 315 of the Authorization Act, we are proposing this rule to authorize such take, with limitations, that result from Department of Defense military readiness activities. If the Department of Defense determines that a proposed or an ongoing military readiness activity may result in a significant adverse effect on the sustainability of a population of a migratory bird species of concern, then they must confer and cooperate with the U.S. Fish and Wildlife Service (Service) to develop appropriate and reasonable-conservation measures to minimize or mitigate identified significant adverse effects. The Secretary of the Interior, or her designee, will retain the power to withdraw or suspend the authorization for particular activities in appropriate circumstances.

We invite your comments on this proposed rule.

DATES: We will accept comments on this proposed rule until August 2, 2004.

ADDRESSES: You may mail, fax, or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 4107, Arlington, Virginia 22203–1610, fax (703) 358–2217. Comments can also be sent on-line at *DODMBTARULE@fws.gov.* The proposed rule and other related documents can be downloaded at *http://migratorybirds.fws.gov.* The complete file for this proposed rule is available for inspection, by appointment, during normal business hours at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia 22203, telephone (703) 358–1714.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Migratory birds are of great ecological and economic value and are an important international resource. They are a key ecological component of the environment, and they also provide immense enjoyment to millions of Americans who study, watch, feed, or hunt them. Recognizing their importance, the United States has been an active participant in the internationally coordinated management and conservation of migratory birds. The Migratory Bird

Treaty Act (16 U.S.C. 703–712) (MBTA) is the primary legislation in the United States established to conserve migratory birds. We, the U.S. Fish and Wildlife Service (Service), are the Federal agency within the United States responsible for administering and enforcing the statute.

The MBTA, originally passed in 1918, implements the United States' commitment to four bilateral treaties, or conventions, for the protection of a shared migratory bird resource. The original treaty upon which the MBTA was based was the Convention for the Protection of Migratory Birds signed with Great Britain in 1916 on behalf of Canada for the protection ''of the many species of birds that traverse certain parts of the United States and Canada in their annual migration.'' The MBTA was subsequently amended after treaties were signed with Mexico (1936, amended 1972, 1995), Japan (1972), and Russia (1976), and the amendment of the treaty with Canada (1999).

The treaties and subsequent amendments impose substantive obligations on the United States for the conservation of migratory birds and their habitats, including, but not limited to, the following conservation principles:

To conserve and manage migratory birds internationally;

To sustain healthy migratory bird populations for consumptive and nonconsumptive uses;

To provide for, maintain, and protect habitat necessary for the conservation of migratory birds; and

To restore depleted populations of migratory birds.

Each of the treaties protects selected species of birds and specifies closed seasons for hunting game birds. The list of the species protected by the MBTA appears in title 50, section 10.13, of the Code of Federal Regulations (50 CFR 10.13).

Under the MBTA, it is unlawful ''by any means or in any manner, to pursue, hunt, take, capture, [or] kill'' any migratory birds except as permitted by regulation (16 U.S.C. 703). The regulations at 50 CFR 21.11 prohibit the take of migratory birds except under a valid permit or as permitted in the implementing regulations. We define ''take'' to mean to ''pursue, hunt, shoot, wound, kill, trap, capture, or collect'' or to attempt these activities (50 CFR 10.12).

On July 18, 2000, the United States Court of Appeals for the District of Columbia ruled in *Humane Society* v. *Glickman,* 217 F.3d 882 (D.C. Cir. 2000), that Federal agencies are subject to the take prohibitions of the MBTA. The United States had previously taken the position, and two other courts of appeals held or suggested, that the MBTA does not by its terms apply to Federal agencies. *See Sierra Club* v. *Martin,* 110 F.3d 1551, 1555 (11th Cir. 1997); *Newton County Wildlife Ass'n* v *U.S. Forest Service,* 113 F.3d 110, 115 (8th Cir. 1997). Subsequently on December 20, 2000, we issued a Director's Order to clarify the Service's position that, pursuant to *Glickman,* Federal agencies are subject to the permit requirements of the Service's existing regulations.

Because the MBTA is a criminal statute and does not provide for citizen suit enforcement, a private party who violates the MBTA is subject to investigation by the Service and/or prosecution by the Department of Justice. However, the Administrative Procedure Act (APA) allows private parties to file suit to prevent a Federal agency from taking ''final agency action'' that is ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law'' (5 U.S.C. 706(2)(A)). If the prohibitions of the MBTA apply to Federal agencies, private parties could seek to enjoin Federal actions that take migratory birds, unless such take is authorized pursuant to regulations developed in accordance with 16 U.S.C. 704, even when such Federal actions are necessary to fulfill Government responsibilities and even when the action poses no threat to the species at issue.

In *Center for Biological Diversity* v. *Pirie,* a private party obtained an injunction prohibiting live fire military training exercises of the Department of the Navy that had the effect of killing some migratory birds on the island of Farallon de Medinilla (FDM) in the Pacific Ocean. On March 13, 2002, the United States District Court for the District of Columbia ruled that the Navy activities at FDM resulting in a take of migratory birds without a permit from the Service violated the MBTA and the APA (191 F. Supp. 2d. 161 and 201 F. Supp. 2d 113). On May 1, after hearing argument on the issue of remedy, the Court entered a preliminary injunction ordering the Navy to apply for a permit from the Service to cover the activities, and preliminarily enjoined the training activities for 30 days. The United States Court of Appeals for the District of Columbia Circuit stayed the District Court's preliminary injunction pending appeal. The preliminary injunction, and associated stay, expired on May 31. A permanent injunction was issued by the District Court on June 3. The Circuit Court also stayed this injunction pending appeal on June 5, 2002. On December 2, 2002, the President signed the Authorization Act creating an interim period during which the prohibitions on incidental take of migratory birds would not apply to military readiness activities. During the interim period, Congress also directed the Secretary of the Interior to develop regulations that exempt the Armed Forces from incidental take during authorized military readiness activities. The Department of Defense must concur with the regulations before they take effect. The Circuit Court subsequently dismissed the *Pirie* case as moot. In light of the *Glickman and Pirie* decisions, the authorization that would be provided by this rule is essential to preserving the Service's role in determining what military readiness activities, if any, create an unacceptable risk to the migratory bird resources and should be modified or curtailed.

The Department of Defense is responsible for protecting the United States from external threats. To provide for national security, they engage in military readiness activities, which include all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. Military readiness does not include: (a) the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare, and recreation activities, shops, and mess halls; (b) the operation of industrial activities; or (c) the construction or demolition of facilities listed above.

The 2003 National Defense Authorization Act (Pub. L. 107–314, 116 Stat. 2458, Dec. 2, 2002, 16 U.S.C. 703 note) (hereinafter ''Authorization Act'') requires the Secretary of Defense, in consultation with the Secretary, to identify ways to minimize, mitigate, and monitor take of migratory birds during military readiness activities and requires the Secretary to prescribe, with the concurrence of the Secretary of Defense, a regulation that exempts such activities from the MBTA's prohibitions against take of migratory birds. With this language, Congress has signaled that the Department of Defense should give appropriate consideration to the protection of migratory birds when planning and executing military readiness activities, but not at the expense of diminishing the effectiveness of such activities. Any diminishment in effectiveness could impair the Department of Defense's ability to fulfill

its national security mission. Diminishment could occur when military training or testing is modified in ways that do not allow the full range of training methods to be explored.

This proposed rule, if finalized, will authorize the Department of Defense to take migratory birds associated with military readiness activities, subject to certain limitations and subject to withdrawal of the authorization to ensure consistency with the provisions of the migratory bird treaties. The authorization provided by this rule is necessary to ensure that the work of the Department of Defense in meeting its statutory responsibilities can go forward. This rule is also appropriate and necessary to preserve the treaties as workable and sensible protections of a vital resource and to meet the Secretary's obligations under Section 704 of the MBTA as well as under Section 315 of the Authorization Act. This proposed rule has been developed in coordination and cooperation with the Department of Defense and the Secretary of Defense concurs with the requirements herein.

Executive Order 13186

Migratory bird conservation relative to the Department of Defense activities other than military readiness activities will be addressed separately in a Memorandum of Understanding (MOU) developed in accordance with Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, signed January 10, 2001. Upon completion of the MOU, and in keeping with the intent of the Executive Order for Federal agencies to promote the conservation of migratory bird populations, the Service proposes issuing a 50 CFR 21.27 Special Purpose Permit to address specific actions identified in the MOU not covered by this rule.

Measures Taken by the Department of Defense To Minimize and Mitigate Takes of Migratory Birds

As the basis for this proposed rule, under the authority of the MBTA and in accordance with Section 315 of the Authorization Act, the Department of Defense will consult with the Service to identify measures to minimize and mitigate adverse impacts of authorized military readiness activities on migratory birds and to identify techniques and protocols to monitor impacts of such activities. The inventory, avoidance, habitat enhancement, partnerships, and monitoring efforts described below illustrate the efforts currently undertaken by the Department of Defense to minimize adverse impacts to migratory birds from testing and training activities to maintain a ready defense. Additional conservation measures, designed to minimize and mitigate adverse impacts of authorized military readiness activities on affected migratory bird species, with emphasis on species of concern, will be developed in joint coordination with the Service when specific military readiness activities suggest the need for additional measures.

We have a long history of working with Department of Defense installation natural resources managers through our Field Offices to develop and implement these conservation initiatives. Many of the conservation measures detailed below represent state-of-the-art techniques and practices to inventory, protect, and monitor migratory bird populations. In accordance with provisions of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a *et seq.*), these conservation measures are detailed in Integrated Natural Resources Management Plans (INRMPs) for specific installations and endorsed by the Service and State fish and game agencies.

Bird Conservation Planning. The Department of Defense prepares INRMPs for most of the Department of Defense installations. Under the Sikes Act, the Department of Defense must provide for the conservation and rehabilitation of natural resources on military installations. To facilitate the program, the Secretary of Defense prepares and implements an INRMP for each military installation in the United States on which significant natural resources are found. The resulting plans must reflect the mutual agreement of the military department, the Service, and the appropriate State fish and wildlife agency on conservation, protection, and management of fish and wildlife resources. INRMPs incorporate conservation measures addressed in Regional or State Bird Conservation Plans to ensure that the Department of Defense does its part in landscape-level management efforts. INRMPs are a significant source of baseline conservation information and conservation initiatives used to develop National Environmental Policy Act (NEPA) documents for military readiness activities. This linkage helps to ensure that appropriate conservation measures are incorporated into mitigation actions, where needed, which will protect migratory birds and their habitats.

The Fish and Wildlife Conservation Act of 1980, as amended in 1988, directs the Secretary of the Interior to ''identify species, subspecies, and populations of all migratory non-game birds that, without additional conservation action, are likely to become candidates for listing under the Endangered Species Act of 1973.'' This list is prepared and updated at 5-year intervals by the Service's Division of Migratory Bird Management. The current list of the ''Birds of Conservation Concern'' is available at *http://migratorybirds.fws.gov/reports/bcc2002.pdf*.

''Birds of Conservation Concern 2002'' includes species that are of concern because of (a) documented or apparent population declines, (b) small or restricted populations, or (c) dependence on restricted or vulnerable habitats. It includes three distinct geographic scales: Bird Conservation Regions, Service Regions, and National. The Service Regions include the seven Service Regions plus the Hawaiian Islands and Puerto Rico/U.S. Virgin Islands.

Bird Conservation Regions (BCRs), adopted by the North American Bird Conservation Initiative (NABCI), are the most basic geographical unit by which migratory birds are designated as birds of conservation concern. The BCR list includes certain species endemic to Hawaii, the Pacific Island territories, and the U.S. Caribbean Islands that are not protected by the MBTA, and thus are not subject to this proposed rule. These species are clearly identified in the list. The complete BCR list contains 276 species. NABCI is a coalition of U.S., Canadian, and Mexican governmental agencies and private organizations working together to establish an inclusive framework to facilitate regionally based, biologically driven, landscape-oriented bird conservation partnerships. A map of the NABCI BCRs can be viewed at *http://www.nabci-us.org.*

The comprehensive bird conservation plans, such as the North American Waterfowl Management Plan, the U.S. Shorebird Conservation Plan, Partners in Flight (PIF) Bird Conservation Plans, and the North American Waterbird Conservation Plan, are the result of coordinated partnership-based national and international initiatives dedicated to migratory bird conservation. Each of these initiatives has produced landscape-oriented conservation plans that lay out population goals and habitat objectives for birds. Additional information on these plans and their respective migratory bird conservation goals can be found at:

North American Waterfowl Management Plan (*http://birdhabitat.fws.gov/NAWMP/nawmphp.htm*).
North American Waterbird Conservation Plan (*http://www.waterbirdconservation.org*).
U.S. Shorebird Conservation Plan (*http://shorebirdplan.fws.gov/*).
Partners in Flight (*http://www.partnersinflight.org*).

Conservation Partnerships. The Armed Forces have entered into a number of conservation partnerships with nonmilitary partners to improve habitats and protect avian species. In 1991, the Department of Defense, through each of the military services, joined the PIF initiative. The Department of Defense developed a PIF Strategic Plan in 1994, and revised it in 2002. The Department of Defense PIF program is recognized as a model conservation partnership program. Through the PIF initiative, the Department of Defense works in partnership with over 300 Federal and State agencies and nongovernmental organizations (NGOs) for the conservation of neotropical migratory and resident birds and enhancing migratory bird survival. For example, bases have worked with NGOs to develop management plans that address such issues as grazing and the conversion of wastewater treatment ponds to wetlands and suitable habitat. Universities use the Department of Defense lands for migratory bird research and, on occasion, re-establish nesting pairs to take advantage of an installation's hospitable habitat. The Department of Defense PIF program tracks this research and provides links between complementary research on different installations and service branches.

The Authorization Act included a provision that allows the Department of Defense to provide property at closed bases to conservation organizations for use as habitat and another provision that, in order to lessen problems of encroachment, allows the Department of Defense to purchase conservation easements on suitable property in partnership with other groups. Where utilized, these provisions will offer further conservation benefits to migratory birds.

Bird Inventories. The most important factor in minimizing and mitigating takes of migratory birds is an understanding of when and where such takes are likely to occur. This means developing knowledge of migratory bird habits and life histories, including their migratory paths and stopovers as well as their feeding, breeding, and nesting habits.

The Department of Defense implements bird inventories and monitoring programs in numerous ways. Some Department of Defense installations have developed partnerships with the Institute for Bird Populations to establish Monitoring Avian Productivity and Survivorship (MAPS) stations. The major objective of the MAPS program is to contribute to an integrated avian population monitoring system for North American land birds by providing annual regional indices and estimates for four population and demographic parameters for select target species in seven different regions of North America. The MAPS methodology provides annual regional indices of adult population size and post-fledgling productivity from data on the numbers and proportions of young and adult birds captured; annual regional estimates of adult population size, adult survivorship, and recruitment into the adult population from capture-recapture data on adult birds; and additional annual estimates of adult population size from point count data collected in the vicinity of MAPS stations. Without these critical data, it is difficult or impossible to account for observed population changes. The Department of Defense is helping to establish a network of MAPS stations in all seven biogeographical regions and build the program necessary to monitor neotropical migratory bird population changes nationwide. Approximately 20% of the continental MAPS network involves military lands.

Since the early 1940s, radar has been used to monitor bird migration. The newest weather surveillance radar, WSR–88D or NEXRAD (for Next Generation Radar), is ideal for studies of bird movements in the atmosphere. This sophisticated radar system can be used to map geographical areas of high bird activity (*e.g.,* stopover, roosting and feeding, and colonial breeding areas). It also provides information on the quantity, general direction, and altitudinal distribution of birds aloft. Currently, the United States Air Force is using NEXRAD, via the U.S. Avian Hazard Advisory System (AHAS), to provide bird hazard advisories to all pilots, military and civilian, in an attempt to warn air traffic of significant bird activity. The information is publicly available for the contiguous United States on line at *http://www.usahas.com* and will soon be available for the State of Alaska.

The NEXRAD information is critically important for the protection of habitats used by migratory birds during stopover periods. This information is vital to the Department of Defense land managers who protect stopover areas on military land. The data is also particularly important to land managers of military air stations where bird/aircraft collisions threaten lives and cost millions of dollars in damages every year. The Department of Defense established a partnership with the Department of Biological Sciences at Clemson University to collect, analyze, and use the biological information from the NEXRAD network to identify important stopover habitat in relation to the Department of Defense installations. Initial efforts were concentrated in the Southeast to complement existing radar data from the Gulf Coast. This partnership has enabled the collection and transfer of radar data from all NEXRAD sites, via modem, to one remote station at Clemson University, where the data can be archived and analyzed.

The Department of Defense uses bird inventory and survey information in connection with the preparation of INRMPs. The Department of Defense also uses bird inventory and survey information when undertaking environmental analyses required under the NEPA. An environmental assessment or an environmental impact statement is used to determine the potential effects of any new, planned activity on natural resources, including migratory birds.

The Department of Defense PIF program is currently developing a database of bird species listed in the Service's ''Birds of Conservation Concern'' report that are likely to occur on each of the installations utilizing the Birds of Conservation Concern published by the Service. This database will be valuable in initially evaluating what species may potentially be affected by military readiness activities.

Avoidance. Avoidance is the most effective means of minimizing takes of migratory birds. Where practicable, the Department of Defense avoids potentially harmful use of nesting sites during the breeding and nesting seasons and of resting sites on migratory pathways during migration seasons. Avoidance sometimes involves using one area of a range rather than another. On some sites in which bombing, strafing, or other activities involving the use of live military munitions could impact birds in the area, the Department of Defense may conduct an initial, benign sweep of the site to ensure that any migratory birds in the area are dispersed before live ordnance is used. Another tool used by the Department of Defense to deconflict flight training activities is the U.S. Air Force Bird Avoidance Model (BAM). This model

places breeding bird and Christmas count data into a Geographic Information Systems model to assist range planners in selecting training times when bird activity is low. The BAM is available on line at the *http://www.usahas.com* Web site.

Pesticide Reduction. Reducing or eliminating pesticide use also benefits migratory birds. The Department of Defense maintains an integrated pest management (IPM) program that is designed to reduce the use of pesticides to the minimum necessary. The Department of Defense policy requires all operations, activities, and installations worldwide to establish and maintain safe, effective, and environmentally sound IPM programs. IPM is defined as a planned program, incorporating continuous monitoring, education, record-keeping, and communication to prevent pests and disease vectors from causing unacceptable damage to operations, people, property, material, or the environment. IPM uses targeted, sustainable (*i.e.,* effective, economical, and environmentally sound) methods, including education, habitat modification, biological control, genetic control, cultural control, mechanical control, physical control, regulatory control, and the judicious use of least-hazardous pesticides. The Department of Defense policy mandates incorporation of sustainable IPM philosophy, strategies, and techniques in all aspects of the Department of Defense pest management planning, training, and operations, including installation pest management plans and other written guidance to reduce pesticide risk and prevent pollution.

Habitat Conservation and Enhancement. Habitat conservation and enhancement generally involve improvements to existing habitat, the creation of new habitat for migratory birds, and enhancing degraded habitats. Improvements to existing habitat include wetland protection, maintenance and enhancement of forest buffers, elimination of feral animals (in particular, feral cats) that may be a threat to migratory birds, and elimination of invasive species that crowd out other species necessary to migratory bird survival. Examples of the latter include control and elimination of brown tree snake, Japanese honeysuckle, kudzu, and brown-headed cowbirds.

Efforts to eliminate invasive species are being undertaken in association with natural resources management under Sikes Act INRMPs. For example, at one site, grazing was reduced from more than 60,000 to about 23,000 acres, and has become a management tool to enhance the competitive advantage of native plants, especially perennial grasses. Special projects are under way on Department of Defense property to control exotic plants and to remove unused structures that occupy potentially valuable habitat or unnaturally increase predator populations. At some locations, native forest habitat is being reestablished.

The preparation of INRMPs continues to offer opportunities to consider such land management measures as converting to uneven-age and/or other progressive forest management that enhances available habitat values, establishing native warm-season grasslands, maintaining and enhancing bottomland hardwood forests, and promoting positive water use modifications to improve hydrology and avian habitat in arid areas. Department of Defense installations are active in promoting the use of nest boxes and, where appropriate, the use of communications towers for nesting. In addition, the PIF program has prepared fact sheets addressing such issues as communications towers and power lines, West Nile virus, wind energy development, the Important Bird Areas program, and bird/aircraft strike hazards (BASH).

Other. At the very few sites where the potential for migratory bird take is more severe, the Department of Defense has implemented extensive mitigation measures. In such instances, the responsible military service has taken practicable measures to minimize the impacts of their operations on protected migratory birds. Such measures include limiting the type and quantity of ordnance; limiting target areas and activities to places and times that protect key nesting areas for migratory birds; implementing fire suppression programs or measures where wildfire can potentially damage nesting habitat; conducting environmental monitoring; and implementing mitigation measures, such as predator removal, on the site or nearby.

Monitoring the Impacts of Military Readiness Activities on Migratory Birds

The Department of Defense monitors bird populations that may be affected by military readiness activities in numerous ways. In addition to the MAPS program discussed above, Department of Defense facilities participate in the Breeding Biology Research and Monitoring Database (BBIRD) program to study nesting success and habitat requirements for breeding birds. Many installations also engage in Christmas bird counts, migration counts (Point, Circle, Area, or Fly Over Counts), standardized and/or customized breeding and wintering point counts, grassland bird flush counts, NEXRAD (discussed above) and BIRDRAD studies, point count surveys, hawk watches, overflight surveys, and/or rookery surveys. At sites where bird takes are a concern, such as Farallon de Medinilla in the Northern Marianas, the Department of Defense engages in more extensive monitoring, including overflight and rookery surveys several times a year so that it can monitor trends in bird populations.

Department of Defense is not alone in monitoring the status of birds on its installations. Much of its monitoring is done through formal partnerships with conservation organizations. In addition, Watchable Wildlife programs provide opportunities for the public to provide feedback on the numbers and types of birds they have observed from viewing sites on Department of Defense installations.

Department of Defense can use clear evidence of bird takes, such as the sight of numerous dead or injured birds, as a signal that it should modify its activities, as practicable, to reduce the number of takes. With respect to the problem of bird/aircraft collisions, the Department of Defense undertakes intensive, bird-by-bird monitoring. The U.S. Air Force Safety Center's Bird/Wildlife Aircraft Strike Hazard team at Kirtland Air Force Base, NM, and the Navy Safety Center at Norfolk, VA, track aircraft/wildlife (bird and mammal) collisions because of the danger such collisions represent to pilots, crews, and aircraft. By focusing on local, regional, and seasonal populations and movements of birds, pilots and airport personnel have been better able to avoid collisions, in many cases by modifying those conditions at airfields that are attractive to birds.

Department of Defense will continue to develop and implement conservation measures, as described above, to mitigate adverse impacts on species of concern, from military readiness activities. Department of Defense will also continue to consult with the Service to identify measures to minimize and mitigate testing and training impacts and will continue to monitor the impacts of military readiness activities on species of concern.

What Are the Provisions of the Proposed Rule?

NEPA Considerations

The NEPA, and its regulations at 40 CFR 1500–1508, require that Federal

agencies prepare environmental impact statements for ''major Federal actions significantly affecting the quality of the human environment.'' These statements must include a detailed analysis of the impacts of an agency's proposed action and any reasonable alternatives to that proposal. NEPA requires the responsible Federal official to ''consult with and obtain comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. 42 U.S.C. 4332(2)(C). NEPA also provides for public involvement in the decision making process. The Council on Environmental Quality's (CEQ) regulations implementing NEPA emphasize the integration of the NEPA process with the requirements of other environmental laws. CEQ regulations at 40 CFR 1500.2 state: ''Federal agencies shall to the fullest extent possible * * * integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.'' Regulations at 40 CFR 1502.25 state: ''To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by * * * other environmental review laws and executive orders.''

In keeping with this emphasis, the proposed rule anticipates that the Department of Defense will use the NEPA process to determine whether any ongoing or proposed military readiness activity is ''likely to result in a significant adverse effect on the population of a migratory bird species of concern.'' More particularly, the Department of Defense prepares NEPA analyses whenever they propose to undertake a new military readiness activity that may significantly affect the quality of the human environment; make a substantial change to an on-going military readiness activity that is relevant to environmental concerns; learn of significant new circumstances or information relevant to the environmental concerns bearing on an on-going military readiness activity; or prepare or revise an INRMP covering an area used for military readiness activities. During the preparation of environmental impacts statements analyzing the military readiness activities' effects on migratory bird species, DOD consults with the Service as an agency with jurisdiction by law and special expertise. If the Department of Defense identifies any such significant adverse effects on migratory birds during the preparation of its NEPA analysis, this rule would require the Department of Defense to confer and cooperate with the Service to develop appropriate conservation measures to minimize or mitigate any such significant adverse effects. Upon finalization of this rule, the Department of Defense will continue to be responsible for ensuring that military readiness activities are implemented in accordance with all applicable statutes including NEPA and ESA.

Endangered Species Act Consideration

Section 7(a)(1) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), provides that, ''[t]he Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act.'' Furthermore, section 7(a)(2) requires all Federal agencies to insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. We have determined that this proposed rule to authorize take under the MBTA will have no effect on listed species. The proposed rule does not authorize take under the ESA. In addition, if a military training activity may affect a listed species, the Department of Defense must consult with the Service in accordance with section 7(a)(2) of the ESA.

Rule Authorization

The proposed rule would authorize the Department of Defense to take migratory birds as an incidental result of military readiness activities. The Department of Defense must continue to apply for and receive an MBTA permit for scientific collecting, control of birds causing damage to Department of Defense property, or any other activity that is addressed by our existing permit regulations. These activities could not be conducted under the authority of this rule. If any Department of Defense activity falls within the scope of our existing regulations, we will consider, when processing the application, the specific take requested as well as any other take authorized by this proposed rule that may occur.

Authorization of takes under this proposed rule would apply to take of migratory birds incidental to military readiness activities, including (a) all training and operations of the Armed Forces that relate to combat, and (b) the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. Authorization of take would not apply to: (a) Routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare, and recreation activities, shops, and mess halls; (b) operation of industrial activities; or (c) construction or demolition of facilities relating to these routine operations.

The authorization provided by this rule is subject to the military service conducting an otherwise lawful military readiness activity in compliance with the provisions of the rule. To ensure the Service maintains the ability to manage and conserve the resource, the Secretary retains the authority to withdraw authorization of take with respect to any specific military readiness activity under certain circumstances.

With respect to a Department of Defense military readiness activity likely to take migratory birds, the rule would authorize take provided the Department of Defense is in compliance with the following requirement:

If ongoing or proposed activities are likely to result in a significant adverse effect on the sustainability of the population of a migratory bird species of concern, the Department of Defense must confer and cooperate with the Service to develop appropriate conservation measures to minimize or mitigate such significant adverse effects.

We recognize that data on species of migratory birds may be limited. Furthermore, the migratory nature of most species complicates assessment of the expected effects of a proposed action or the effects of an ongoing action. We encourage the Department of Defense to develop information that will assist in guiding its decisions regarding migratory bird conservation, particularly in developing or amending INRMPs. This proposed rule would not require the Department of Defense to obtain new data to assess impacts of a proposed or an ongoing action on birds in order to comply with the provisions of this rule. Existing demographic, population, habitat association, species indicator, or ecological indicator data may be used to estimate the level of take and evaluate whether a proposed or an ongoing action is likely to have a significant adverse impact on a population.

The Department of Defense will continue to be responsible for addressing its activities other than military readiness through an MOU

developed in accordance with Executive Order 13186.

When Would Take Not Be Authorized

If a proposed or an ongoing action may threaten the sustainability of a population of a migratory bird species of concern, the Department of Defense must confer with the Service so we may recommend conservation measures. In certain circumstances, the Secretary must suspend the take authorization with respect to a particular military readiness activity; in other circumstances, the Secretary has the discretion to initiate a process that may result in withdrawal. We will make every effort to work with the Department of Defense in advance of a potential determination to withdraw take authorization in order to resolve migratory bird take concerns and avoid withdrawal. With respect to discretionary withdrawal, the rule provides an elevation process if the Secretary of Defense or his/her delegatee determines that protection of national security requires continuation of the activity.

The Secretary will immediately suspend authorization for take if continued authorization would not be compatible with any one of the migratory bird treaties. Withdrawal of authorization may be proposed if the Secretary determines that failure to do so would result in a significant adverse effect on the sustainability of a population of a migratory bird species of concern and one or more of the following circumstances apply:

(A) The Department of Defense has not implemented conservation measures that (i) are directly related to protecting the migratory bird species of concern affected by the proposed military readiness activity; (ii) would significantly reduce take of migratory birds species of concern affected by the military readiness activity, (iii) are economically feasible, and (iv) do not limit the effectiveness of military readiness activities.

(B) The Department of Defense fails to conduct mutually agreed upon monitoring to determine the effects of a military readiness activity on the migratory bird species of concern and/or the efficacy of the conservation measures implemented by the Department of Defense.

(C) The Department of Defense has not provided reasonable, appropriate, and readily available information that the Service has requested and that the Secretary determines is necessary to evaluate whether withdrawal of take authorization for the specific action is required or appropriate.

The determination as to whether an immediate suspension of authorization is warranted (*i.e.*, whether the action would be compatible with a migratory bird treaty), or withdrawal of an authorization is proposed will be made independent of each other. Regardless of whether the circumstances of paragraphs (A) through (C) above exist, there will be an immediate suspension if the Secretary determines, after seeking the views of the Secretary of Defense and after consulting with the Secretary of State, that, incidental take of migratory birds during a specific military readiness activity would not be compatible with one or more of the migratory bird treaties.

Proposed withdrawal of authorization will be provided in writing to the Secretary of Defense including the basis for the determination. The notice will also specify any conservation measures or other measures that would, if the Department of Defense agrees to implement them, allow the Secretary to cancel the proposed withdrawal of authorization. Any take incidental to a military readiness activity subject to a proposed withdrawal of authorization would continue to be authorized by this regulation until the Secretary of the Interior, or his or her delegatee, makes a final determination on the withdrawal.

The Secretary may, at his or her discretion, cancel a suspension or withdrawal of authorization at any time. A suspension may be cancelled in the event new information is provided that the proposed activity would be compatible with the migratory bird treaties. A proposed withdrawal may be cancelled if the Department of Defense modifies the proposed activity to alleviate significant adverse effects on the sustainability of a population of a migratory bird species of concern or the circumstances in paragraphs (A)—(C) above no longer exist. Cancellation of suspension or withdrawal of authorization becomes effective upon delivery of written notice from the Secretary to the Department of Defense.

Request for Reconsideration

In order to ensure that the action of the Secretary in not authorizing take does not result in significant harm to the Nation, any proposal to withdraw authorization under paragraph 21.15(b)(2) of the proposed rule, will be reconsidered by the Secretary of the Interior or his or her delegatee who must be an official nominated by the President and confirmed by the Senate, if, within 30 days of the notification with respect to a military readiness activity, the Secretary of Defense, or his or her delegatee who also must be an official nominated by the President and confirmed by the Senate, determines that protection of the national security requires continuation of the action.

Scope of Authorization

The take authorization provided by the rule would apply to the Department of Defense military readiness activities, including those implemented through the Department of Defense contractors and their agents.

Principles and Standards

As discussed above, the only condition applicable to the authorization under this rule is that the Department of Defense confer and cooperate with the Service if the Department of Defense determines ''that a proposed or an ongoing military readiness activity is likely to result in a significant adverse effect on the sustainability of a population of a migratory bird species of concern.'' To avoid this threshold from being reached, as well as to provide for migratory bird conservation, it is in the Department of Defense's best interest to address potential migratory bird impacts from military readiness activities by adopting the following principles and standards.

To proactively address migratory bird conservation, the Department of Defense should engage in early planning and scoping and involve agencies with special expertise in the matters relating to the potential impacts of a proposed action. When a proposed action by the Department of Defense related to military readiness may result in the incidental take of birds, we encourage the Department of Defense to contact the Service so we can assist the Department of Defense in addressing potential adverse impacts on birds and mitigating those impacts, particularly those that may have a significant adverse effect on a population of a migratory bird species of concern.

To identify species of concern, the Department of Defense should consult ''Birds of Conservation Concern''; priority migratory bird species documented in the comprehensive bird conservation plans; species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; listed threatened and endangered bird species in 50 CFR 17.11; and MBTA-listed game birds below desired population sizes.

The Department of Defense should, in close coordination with the Service, develop a list of conservation measures designed to minimize and mitigate potential adverse impacts of authorized military readiness activities on affected

migratory bird species, with emphasis on species of concern. A cooperative approach initiated early in the project planning process will have the greatest potential for successfully reducing or eliminating adverse impacts. Our recommendations will emphasize avoidance, minimization, and rectifying adverse impacts. We encourage the Department of Defense to consider obvious avoidance measures at the outset of project planning, such as siting projects to avoid important nesting areas or to avoid collisions of birds with structures, or timing projects to avoid peak breeding activity. In addition, models such as the U.S. AHAS and BAM should be used to avoid bird activity when planning flight training and range use. These conservation measures should be considered for incorporation in new NEPA analyses, INRMPs, INRMP revisions, and base comprehensive or master plans, whenever adverse impacts to migratory birds may result from proposed military readiness activities.

''Conservation measures'' are project design or mitigation activities that are technically and economically reasonable, and minimize the take of migratory birds and adverse impacts while allowing for completion of an action in a timely manner. When appropriate, the Department of Defense should adopt existing industry guidelines supported by the Service and developed to avoid or minimize take of migratory birds. Monitoring is an important conservation measure or a component of conservation measures when it has the potential to produce data relevant to substantiating impacts, validating effectiveness of mitigation, or providing other pertinent information. We recognize that implementation of conservation measures will be subject to the availability of appropriations.

The Department of Defense should promote the inclusion of comprehensive migratory bird management objectives from bird conservation plans into the Department of Defense planning documents. The bird conservation plans available either from the Service's Regional Offices or via the Internet include: North American Waterfowl Management Plan, PIF, and the U.S. Shorebird Conservation Plan. The North American Waterbird Conservation Plan, the newest planning effort, addresses conservation of seabirds, wading birds, terns, gulls, and some marsh birds, and their habitats. The Department of Defense should continue to work through the PIF program for incorporating bird habitat management efforts into INRMPs. The Department of Defense should also work collaboratively with partners to identify, protect, restore, and manage Important Bird Areas, Western Hemisphere Shorebird Reserve Network sites, and other significant bird sites that occur on Department of Defense lands.

In accordance with the Authorization Act and the 2002 revised Sikes Act guidelines, the annual review of INRMPs by the Department of Defense, in cooperation with the Service and State fish and wildlife agencies, should include monitoring results of any migratory bird conservation measures.

The Department of Defense should use the best available databases to determine which migratory bird species are likely to occur in the area of proposed military readiness activities. This would include species likely to occur in the project area during all phases of the project. Any species of concern should be specifically noted.

The Department of Defense should use the best scientific data available to assess through the NEPA process, or other environmental requirements, the expected impact of proposed or ongoing military readiness activities on migratory bird species likely to occur in action areas. The Department of Defense should address impacts on species of concern more thoroughly and specifically, focusing on the effects of the proposed action on the sustainability of these populations. Special consideration should be given to priority habitats, such as important nesting areas, migration stop-over areas, and wintering habitats.

The Department of Defense should adopt, to the maximum extent practicable, conservation measures designed to minimize and mitigate any adverse impacts of authorized military readiness activities on affected migratory bird species, with emphasis on species of concern. The term ''to the maximum extent practicable'' means without limiting the subject readiness activities in ways that compromise the effectiveness of those activities, and to the extent economically feasible. The Department of Defense should give special emphasis to addressing those activities that may negatively affect the sustainability of a population of a migratory bird species of concern.

At the Department of Defense's request, the Service will provide technical assistance in identifying the migratory bird species and determining those likely to be taken as a result of the proposed action, assessing impacts of the action on migratory bird species, and identifying appropriate conservation measures to mitigate adverse impacts.

Is This Proposed Rule Consistent With the MBTA?

Yes, section 704 and 712(2) of 16 U.S.C. provide us with broad authority to promulgate regulations allowing for the take of migratory birds when compatible with the terms of the migratory bird treaties. We find the take that would be authorized in this proposed rule is compatible with the terms of the treaties and consistent with the purposes of the treaties.

The MBTA implements four treaties: a 1916 treaty with Great Britain on behalf of Canada that was substantially revised by a 1999 protocol; a 1936 treaty with Mexico; a 1972 treaty with Japan; and a 1978 treaty with the former Soviet Union. These international agreements recognize that migratory birds are important for a variety of purposes. They provide a food resource, insectivorous birds are useful to agriculture, they provide recreational benefits, and are useful for scientific and educational purposes, and are important for aesthetic, social, and spiritual purposes. Collectively, the treaties provide mechanisms for protecting the birds and their habitat, and include special emphasis on protecting those birds that are in danger of extinction.

The Japanese and Soviet treaties have the more broadly worded prohibitions against take of migratory birds. At the same time, those treaties include broad exceptions to the take prohibition. The exceptions recognize a variety of purposes for which take may be authorized, including scientific, educational, and propagative purposes; for the protection of persons or property; and for hunting during open seasons. These treaties also authorize takings for ''specific purposes not inconsistent with the objectives'' of the treaties.

The take prohibitions in the 1916 treaty with Canada and the 1936 treaty with Mexico have a narrower focus than the take prohibitions in the Japanese and Soviets treaties. Those treaties are more clearly directed at stopping the indiscriminate killing of migratory birds from hunting through the establishment of closed seasons. Likewise, the prohibitions in the 1999 Canadian protocol retain the structure of the earlier treaty using closed seasons to prohibit hunting.

The take that is authorized by this proposed rule is compatible with the migratory bird treaties. The Japanese and Soviet treaties expressly authorize exceptions from the take prohibition for special purposes not inconsistent with the treaties. The take that would be

authorized here is for a special purpose not inconsistent with the treaties. The authorization allows take of birds only in narrow instances—take that results from military readiness activities. Furthermore, the proposed rule expressly requires the Department of Defense to develop conservation measures to minimize or mitigate impacts where such impacts may have a significant adverse effect on the sustainability of a population of a migratory bird species of concern. Moreover, the Secretary must suspend the take authorization if she concludes that a specific military readiness activity would not be compatible with the migratory bird treaties and may withdraw the authorization if she is unable to obtain from Department of Defense the information needed to assure compliance. In these circumstances, the take that would be authorized by this proposed rule is thus compatible with the terms of the treaties and consistent with the purposes of those treaties.

The proposed rule's process of broad, automatic authorization subject to withdrawal is particularly appropriate to military readiness activities. First, we expect that military readiness activities will rarely, if ever, have the broad impact that would lead to a significant adverse effect on migratory bird species of concern, even absent the conservation measures that the Department of Defense undertakes voluntarily or pursuant to another statute, such as the ESA. Second, The Department of Defense, like other Federal agencies, has a special role in ensuring that the United States complies with its obligations under the four migratory bird treaties, as evidenced by the Migratory Bird Executive Order 13186 (January 10, 2001). Like other Federal agencies, the Department of Defense strives not only to lessen detrimental effects of the Department of Defense actions on migratory birds but to actively promote the conservation of the resource and integrate conservation principles and practices into agency programs. Numerous internal programs and collaborative ventures among Federal agencies and non-Federal partners have contributed significantly to avian conservation. These efforts are grounded in the tenets of stewardship inherent in our treaty obligations. Third, given the importance of military readiness to national security, it is especially important not to create a complex process that, while perhaps useful in other contexts, might impede the timely carrying-out of military readiness activities.

Why Does the Proposed Rule Apply Only to the Department of Defense?

This proposed rule is being developed in accordance with the Authorization Act, which created an interim period, during which the prohibitions on incidental take of migratory birds would not apply to military readiness activities, and requiring the development of regulations authorizing the incidental take of migratory birds associated with military readiness activities. This proposed rule, if finalized, will carry out the mandates of the Authorization Act. This rule would authorize take resulting from otherwise lawful military readiness activities subject to certain limitations and subject to withdrawal of the authorization to ensure consistency with the provisions of the treaties.

Public Comments Invited

We invite comments on this proposed rule from affected or concerned government agencies, the public, the scientific community, industry, environmental organizations, and any other interested party. Please reference ''RIN 1018–AI92'' at the top of your letter. We will consider all comments submitted to us by the deadline indicated above in **DATES**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during normal business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Required Determinations

Regulatory Planning and Review (E.O. 12866) In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. OMB makes the final determination of significance under Executive Order 12866.

a. Preliminary analysis indicates this rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This rule is intended to benefit the Department of Defense, and all of its branches of the Armed Forces, by providing a mechanism to comply with the MBTA and the treaties. A full cost-benefit and economic analysis is not required.

This proposed rule would not affect small businesses or other segments of the private sector. It would apply only to the Department of Defense. Thus any expenditure under this proposed rule would accrue only to the Department of Defense. Our current regulations allow us to permit take of migratory birds only for limited types of activities. This proposed rule would authorize take resulting from the Department of Defense military readiness activities, provided the Department of Defense complies with certain requirements to minimize or mitigate significant adverse effects on the sustainability of a population of a migratory bird species of concern.

Preliminary analysis of the annual economic effect of this rule indicates that it would have *de minimis* effects for the following reasons. Without the rule, the Department of Defense could be subject to injunction by third parties via the APA for lack of authorization under the MBTA for incidental takes of migratory birds that might result from military readiness activities. This rule would enable the Department of Defense to alleviate costs associated with responding to litigation as well as costs associated with delays in military training. Furthermore, the rule is structured such that the Department of Defense is not required to apply for individual permits to authorize take for every individual military readiness activity. The take authorization is conveyed by the rule. This avoids potential costs associated with staff necessary to prepare and review applications for individual permits to authorize military readiness activities that may result in incidental take of migratory birds, and the costs that would be attendant to delay.

The principal annual economic cost to the Department of Defense would likely be related to costs associated with developing and implementing conservation measures to minimize or mitigate impacts from military readiness activities that may have a significant adverse effect on the sustainability of a population of a migratory bird species of concern. However, we anticipate that this threshold of potential effects on the sustainability of a population has a low probability of occurring. The Department of Defense is already obligated to comply with a host of other environmental laws, such as NEPA, which requires them to assess impacts of their military readiness activities on

migratory birds, endangered and threatened species, and other wildlife. Most of the requirements of the proposed rule will be subsumed by these existing requirements.

With the rule, the Department of Defense would have a regulatory mechanism to enable the Department of Defense to effectively implement otherwise lawful military readiness activities. Without the rule, the Department of Defense might not be able to complete certain military readiness activities that could result in the take of migratory birds pending issuance of an MBTA take permit or resolution of any lawsuits.

b. This proposed rule would not create serious inconsistencies or otherwise interfere with the Department of Defense actions, including those other than military readiness. The Department of Defense must already comply with numerous environmental laws intended to encourage minimizing impacts to wildlife.

c. This proposed rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not have anything to do with such programs.

d. This proposed rule raises novel legal or policy issues. This proposed rule raises a novel policy issue in that it implements a new area of our program to carry out the MBTA. Under 50 CFR 21.27, the Service has the authority to issue special purpose permits for take that is otherwise outside the scope of the standard form permits of section 21. Special purpose permits may be issued for proposed actions whereby take of migratory birds could result as an unintended consequence. However, the Service has previously issued such permits only in very limited circumstances.

Regulatory Flexibility Act. For the reasons discussed under Regulatory Planning and Review above, I certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act. This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule would not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We have determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities.

b. This rule would not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings. In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The only effect of this rule would be to authorize incidental takes of migratory birds by the Department of Defense as a result of military readiness activities. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Federalism. In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule would not have significant Federalism effects. A Federalism assessment is not required. Due to the migratory nature of certain species of birds, and given the Federal Government's responsibility to implement the migratory bird treaties, Congress assigned the Federal Government responsibility over these species when it enacted the MBTA. This rule would not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The intent of the rule is to relieve the Department of Defense and the judicial system from potential litigation resulting from potential take of migratory birds during military readiness activities. The Department of the Interior has certified to the Office of Management and Budget that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act. This rule would not require any new information collections under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Under the Paperwork Reduction Act, we do not need to seek Office of Management and Budget (OMB) approval to collect information from current Federal employees, military personnel, military reservists, and members of the National Guard in their professional capacities. Because this rule would newly enable us to collect information only from the Department of Defense employees in their professional capacity, we do not need to seek OMB approval under the Paperwork Reduction Act. In other cases, Federal agencies may not conduct or sponsor, and members of the public are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act. We have made a determination that this proposed rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 Departmental Manual 2, Appendix 1.10. Appendix 1.10 applies to ''policies, directives, regulations, and guidelines of an administrative, financial, legal, and technical, or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.''

Department of Defense military readiness activities occur across a very broad geographic area covering a wide diversity of habitat types and potentially affecting a high diversity of migratory birds. In addition, the specific type of military readiness activity will vary significantly amongst the Armed Services. Because of the broad scope of activities, their locations, habitat types, and potential migratory birds present that may be affected by this proposed rule, it is not foreseeable or reasonable to anticipate all the possible locations where the Department of Defense may conduct military readiness activities or what the circumstances of the activities and the surrounding environment will be, thus it is premature to examine potential impacts of the proposed rule. Any environmental analysis of the proposed rule is determined to be too broad, speculative, and conjectural. A

copy of the Categorical Exclusion is available upon request at the address indicated in the **ADDRESSES** section of this proposed rule.

In addition, we have made the determination that this proposed rule does not dictate extraordinary circumstances that would warrant preparation of an environment document in accordance with Departmental Manual, Part 516, 2.3. First, this proposed rule would only apply to military readiness activities that are otherwise authorized by the Secretary of Defense or the Secretary of the military department concerned. Second, we expect that military readiness activities will rarely, if ever, have the broad impact that would lead to a significant adverse effect on migratory bird species of concern, even absent the conservation measures that the Department of Defense undertakes voluntarily or pursuant to another statute. The Department of Defense also has an important role in ensuring that the United States complies with the four migratory bird treaties.

However, upon finalization of this rule, the Department of Defense will continue to be responsible for ensuring military readiness activities are implemented in accordance with all applicable regulations including NEPA and ESA. In addition, authorization under this rule would require that if a proposed military readiness activity may result in a significant adverse impact on the sustainability of a population of a species of concern, the Department of Defense must confer and cooperate with the Service to develop appropriate measures to minimize or mitigate these effects and address them through their NEPA responsibilities.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. This rule applies only to military readiness activities carried out by the Department of Defense that take migratory birds. It would not interfere with the Tribes' ability to manage themselves or their funds.

Energy Effects. On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed rule is not expected to significantly affect energy supply, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of Regulations. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons described in the preamble, we propose to amend title 50, chapter I, subchapter B of the CFR as follows:

PART 21—[AMENDED]

1. Revise the authority citation for part 21 to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 704, 712(2)); Pub. L. 107–314, 116 Stat. 2458 (16 U.S.C. 703 note).

2. Amend § 21.3 by adding the following definitions, in alphabetical order:

§ 21.3 Definitions.

* * * * *

Conservation measures, as used in § 21.15, means project design or mitigation activities that are reasonable and feasible from a scientific, technological, and economic standpoint, and avoid or minimize the take of migratory birds, rectify, reduce, or eliminate adverse impacts over time, or compensate for such adverse impacts, while allowing for completion of the action in a timely manner. Monitoring is a conservation measure when it has the potential to produce data relevant to substantiating impacts, validating effectiveness of mitigation, or providing other pertinent information.

* * * * *

Military readiness activity includes all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. It includes activities carried out by the Department of Defense and their contractors. It does not include: routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare, and recreation activities, shops, and mess halls; operation of industrial activities; or construction or demolition of facilities relating to these routine operations.

Population, as used in § 21.15, refers to the population of a migratory bird species of concern, and means the number of individuals of a specific species within a particular Bird Conservation Region (BCR).

* * * * *

Secretary of Defense means the Secretary of Defense or any other official in the Department of Defense, any of the military departments, or the Department of Homeland Security with respect to military readiness activities of the United States Coast Guard, who has been nominated by the President and confirmed by the Senate.

* * * * *

Significant adverse effect on the sustainability of a population, as used in § 21.15, means an effect that could result in a population no longer being maintained at a ''biologically viable level for the long term.'' A population is ''biologically viable for the long term'' when its ability to maintain its genetic diversity, to reproduce, and to perform its role or function in its native ecosystem are not irreversibly harmed.

Species of concern refers to those species listed in the periodic report *Birds of Conservation Concern* published by the FWS Division of Migratory Bird Management (*http://migratorybirds.fws.gov/reports/bcc2002.pdf*); priority migratory bird species documented in the comprehensive bird conservation plans (North American Waterbird Conservation Plan *http://www.waterbirdconservation.org*), United States Shorebird Conservation Plan (*http://shorebirdplan.fws.gov*), Partners in Flight Bird Conservation Plans

(*http://www.partnersinflight.org*); species or populations of waterfowl identified as high, or moderately high, continental priority in the North American Waterfowl Management Plan; listed threatened and endangered bird species in 50 CFR 17.11; and Migratory Bird Treaty Act—listed game birds below desired population sizes (*http://migratorybirds.fws.gov/reports/reports.html*).

3. Amend part 21, subpart B by adding a new § 21.15 as follows:

§ 21.15 Authorization of take incidental to military readiness activities

(a) Except to the extent authorization is withdrawn or suspended pursuant to paragraph (b) of this section, the Department of Defense may take migratory birds incidental to military readiness activities provided that, for those ongoing or proposed activities that are likely to result in a significant adverse effect on the sustainability of the population of a migratory bird species of concern, the Department of Defense must confer and cooperate with the Service to develop appropriate conservation measures to minimize or mitigate such significant adverse effects.

(b) Withdrawal of take authorization.

(1) If the Secretary determines, after seeking the views of the Secretary of Defense and consulting with the Secretary of State, that incidental take of migratory birds during a specific military readiness activity would not be compatible with one or more of the migratory bird treaties, the Secretary will suspend authorization of the take associated with that activity.

(2) The Secretary may propose to withdraw, and 30 days thereafter may withdraw, the authorization for any take incidental to a specific military readiness activity if the Secretary determines that a proposed military readiness activity may result in a significant adverse effect on the sustainability of the population of a migratory bird species of concern and one or more of the following circumstances exists:

(i) The Department of Defense has not implemented conservation measures that:

(A) Are directly related to protecting the migratory bird species of concern affected by the proposed military readiness activity;

(B) Would significantly reduce take of the migratory bird species of concern affected by the military readiness activity;

(C) Are economically feasible; and

(D) Do not limit the effectiveness of the military readiness activity;

(ii) The Department of Defense fails to conduct mutually agreed upon monitoring to determine the effects of a military readiness activity on the migratory bird species of concern and/or the efficacy of the conservation measures implemented by the Department of Defense; or

(iii) The Department of Defense has not provided reasonably available information that the Secretary has determined is necessary to evaluate whether withdrawal of take authorization for the specific military readiness activity is appropriate.

(3) When the Secretary proposes to withdraw authorization with respect to a specific military readiness activity, the Secretary will first provide written notice to the Secretary of Defense. Any such notice will include the basis for the Secretary's determination that withdrawal is warranted in accordance with the criteria contained in paragraph (b)(2) of this section, and will identify any conservation measures or other measures that would, if implemented by the Department of Defense, permit the Secretary to cancel the proposed withdrawal of authorization.

(4) Within 30 days of receipt of the notice specified in paragraph (b)(3) of this section, the Secretary of Defense may notify the Secretary in writing of the Department of Defense's objections, if any, to the proposed withdrawal, specifying the reasons therefore. Before acting to withdraw the take authorization for any specific military readiness activity, the Secretary will consider the objections raised by the Department of Defense. If the Secretary continues to believe that withdrawal is appropriate, he or she will provide written notice to the Secretary of Defense of the withdrawal and the rationale therefore, including a response to the Department of Defense's objections. If the Secretary of Defense continues to object to the withdrawal of authorization, the withdrawal will not become effective until the Secretary of Defense has had the opportunity to meet with the Secretary.

(5) Any take incidental to a military readiness activity subject to a proposed withdrawal of authorization will continue to be authorized by this regulation until the Secretary makes a final determination on the withdrawal.

(6) The Secretary may, at his or her discretion, cancel a suspension or withdrawal of authorization at any time. A suspension may be cancelled in the event new information is provided that the proposed activity would be compatible with the migratory bird treaties. A proposed withdrawal may be cancelled if the Department of Defense modifies the proposed activity to alleviate significant adverse effects on the sustainability of a population of a migratory bird species of concern or the circumstances in paragraphs (b)(2)(i) through (iii) of this section no longer exist. Cancellation of suspension or withdrawal of authorization becomes effective upon delivery of written notice from the Secretary to the Department of Defense.

(7) The responsibilities of the Secretary under paragraph (b) of this section, may be fulfilled by his or her delegatee who must be an official nominated by the President and confirmed by the Senate.

Dated: December 12, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: January 8, 2004.

Concurrence of:

Raymond DuBois,

Deputy Under Secretary of Defense (Installation & Environment).

Editorial Note: This document was received by the Office of the Federal Register on May 17, 2004.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040521156–4156–01; I.D. 051704E]

RIN 0648–AS10

Fisheries of the Exclusive Economic Zone Off Alaska; Reduction to a Harvest Restriction for the Harvest Limit Area Atka Mackerel Fishery in the Aleutian Islands Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would remove a harvest restriction on participants in the harvest limit area (HLA) Atka mackerel fishery in the Aleutian Islands subarea. If approved, the regulatory amendments would allow participants assigned to an HLA fishery to harvest Atka mackerel outside of the HLA during the first HLA fishery in each season. This action would allow participants to harvest Atka mackerel

efficiently, would reduce competition with Steller sea lions for prey species within the HLA, and would not increase competition among participants in the groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP), and other applicable laws.

DATES: Comments must be received by June 17, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907–586–7557.
- E-mail: *AM–HLA–0648–AS10@noaa.gov*. Include in the subject line of the e-mail the following document identifier: AM HLA Proposed Rule. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Regulatory Impact Review (RIR) prepared for the proposed rule may be obtained from the mailing listed address above or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands management area are managed under the FMP. The North Pacific Fishery Management Council prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

The western distinct population segment (DPS) of Steller sea lions has been listed as endangered under the Endangered Species Act, and critical habitat has been designated for this DPS (50 CFR 226.202). In order to protect Steller sea lions from jeopardy of extinction and their critical habitat from adverse modification from the effects of the groundfish fisheries, temporal and spatial harvest restrictions were established in regulations for the groundfish fisheries of Alaska (68 FR 204, January 2, 2003). Atka mackerel is an important prey species for Steller sea lions. Under the harvest restrictions, the harvest of Atka mackerel in the Aleutian Islands subarea is managed to control the amount of harvest over time and area. The details for managing the Atka mackerel fishery in 2004 are in the annual harvest specifications (69 FR 9242, February 27, 2004).

The regulations at 50 CFR 679.20(a)(8) establish an HLA fishery to control the removal of Atka mackerel in the HLA. The details of the HLA fishery are explained in the proposed rule for Steller sea lion protection measures (67 FR 56692, September 4, 2002). The HLA is the waters of statistical areas 542 and 543 west of 178° W longitude within 20 nm seaward of sites listed in Table 6 of 50 CFR part 679 and located west of 177°57.00′ W longitude. This area includes critical habitat for Steller sea lions and additional waters around haulouts that are considered important for Steller sea lion foraging.

To reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two areas, the Atka mackerel trawl fleet is divided into two groups assigned to fish in the HLA in either statistical area 542 or statistical area 543. HLA fisheries are conducted twice each season. One of the conditions of participating in the HLA fishery is a prohibition on participating in groundfish fisheries outside the HLA while the first assigned HLA fishery takes place each season. The intent of this prohibition is to ensure participants in the HLA fishery would not leave the HLA assignment unused and switch to another groundfish fishery at the same time, increasing competition with participants in other groundfish fisheries. The current regulations at § 679.7(a)(19) and § 679.20 (a)(8)(iii) prohibit fishing for all groundfish outside the HLA, including Atka mackerel, during the first assigned HLA fishery in a season. The harvest of Atka mackerel outside of the HLA would not increase competition among Atka mackerel fishery and other groundfish fisheries participants because the locations and methods of harvest vary among groundfish fisheries. Therefore, the current regulations are more restrictive than necessary to prevent competition among groundfish fisheries participants. The current regulations also provide less protection to Steller sea lions than the proposed changes would provide because the current regulations actually require harvest of Atka mackerel inside the HLA during the first HLA fishery, potentially competing with Steller sea lions for prey.

The intent of the HLA fishery was to reduce the rate of harvest of Atka mackerel in the HLA. This proposed action would allow participants in the HLA fishery to fish for Atka mackerel outside of the HLA during the first assigned HLA fishery in a season. The prohibition on fishing for groundfish species other than Atka mackerel during the first assigned HLA fishery would not be affected by the proposed change. This action would provide the potential for additional reduction in the rate of Atka mackerel harvest in the HLA, adding protection to Steller sea lions by potentially reducing competition and interaction with the Atka mackerel fleet. The proposed rule also would provide the fishing industry with additional locations during the first HLA fisheries to efficiently harvest Atka mackerel, without competing with other groundfish fisheries.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This action would not have an economic impact on any small entities. The ten groundfish entities that will be directly regulated by this action and currently participate in the Atka mackerel fishery are large entities according to criteria established by the Small Business Administration. That is, gross revenues exceed $3.5 million for each of these vessels. Although gross revenues were not estimated for some species harvested by these vessels, in each case over $3.5 million in gross revenues were identified. As a result, an initial regulatory flexibility analysis was not required and none was prepared.

These vessels are catcher-processors fishing a diversified group of BSAI groundfish fisheries. In addition to Atka mackerel, these vessels make significant harvests of Pacific cod, yellowfin sole, rock sole, Pacific Ocean perch, and other species. The small entity threshold for catcher-processors is $3.5 million. Alaska Region estimates of gross revenues indicate that none of these vessels grossed less than $3.5 million dollars. Five of these vessels are

believed to fish for a single firm. These entities would be treated as a single entity for purposes of the RFA because of their affiliations.

The Regional Administrator determined that fishing activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat under the Endangered Species Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 26, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

2. In § 679.7, paragraph (a)(19) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(19) *Atka Mackerel HLA Groundfish Prohibition.* For vessels registered for an Atka mackerel HLA directed fishery under § 679.20(a)(8)(iii), conduct directed fishing for groundfish, other than Atka mackerel, during the time period that the first Atka mackerel HLA directed fishery to which the vessel is assigned under § 679.20(a)(8)(iii)(B) is open.

* * * * *

3. In § 679.20, paragraph (a)(8)(iii)(F) is revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) * * *

(iii) * * *

(F) *Groundfish directed fishery prohibition.* Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery, other than Atka mackerel, during the opening of the first HLA directed fishery assigned to the vessel in a season, as specified in § 679.7(a)(19).

* * * * *

[FR Doc. 04–12436 Filed 6–1–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 106

Wednesday, June 2, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitations for Nominations for the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces solicitation for nominations to fill 10 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is July 16, 2004.

ADDRESSES: The nominee's name, resume, and completed Form AD–755 must be sent to the U.S. Department of Agriculture, National Research, Extension, Education, and Economics Advisory Board Office, 1400 Independence Avenue, SW.; Room 344–A, Whitten Building; Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, telephone: 202–720–3684; fax: 202–720–6199; e-mail: *dhanfman@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) was amended by the Farm Security and Rural Investment Act of 2002 by adding one additional member to the National Agricultural Research, Extension, Education, and Economics Advisory Board, which totals 31 members. Since the Advisory Board's inception by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of its members were appointed for a one, two, and three-year term, respectively. The terms for 10 of the 31 members who represent specific categories will expire September 30, 2007. Nominations for a three-year appointment for these 10 vacant categories are sought. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

The 10 slots to be filled are:

Category H. National Food Animal Science Society
Category I. National Crop, Soil, Agronomy, Horticulture or Weed Science Societies
Category N. 1890 Land-Grant Colleges and Universities
Category O. 1994 Equity in Education Land-Grant Institutions
Category Q. American Colleges of Veterinary Medicine
Category U. Food Retailing and Marketing Interests
Category W. Rural Economic Development
Category X. National Consumer Interest Group
Category Y. National Forestry Group
Category Z. National Conservation or Natural Resource Group

Nominations are being solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, or for more than one person who fits one category, will be accepted. In your nomination letter, please indicate the specific membership category for each nominee.

Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information'' (which can be obtained from the contact person or may be printed out from the following Web site: *http://www.nareeeab.com*; then search AD–755). All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board will be made by the Secretary of Agriculture.

Done at Washington, DC this 26th day of May 2004.

Rodney J. Brown,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 04–12420 Filed 6–1–04; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Packsaddle Creek and Rammell Hollow Timber Sales Caribou-Targhee National Forest, Teton County, ID

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare environmental impact statement

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement to document the analysis and disclose the environmental impacts of proposed actions to harvest timber; regenerate stands of aspen trees; and construct roads, reconstruct roads, decommission roads and meet Revised Forest Plan Standards for road densities in the Packsaddle Creek and Rammell Hollow areas of the Targhee National Forest in Teton County, Idaho. The proposed projects are located in Township 5 North, Range 44 East, Sections 18 and 19, and Township 5 North, Range 43 East, Sections 1, 2, 11, 12, 13, 14, 23, and 24, Boise Meridian, Teton County, Idaho.

The Teton Basin Ranger District of the Targhee National Forest proposes to

regenerate approximately 600 acres of aspen and harvest an estimated 7,200 hundred cubic feet (3.6 million board feet) of commercial timber on two timber sales. The purpose of the proposed project is to regenerate aspen. Conifer trees will be removed in these aspen-conifer mixed stands using a timber sale contract followed by implementing prescribed fire that will burn the conifer slash and will kill the remaining aspen parent stems. The prescribed fire will stimulate the production of root suckers throughout the treated aspen-conifer stand and will establish aspen regeneration. This activity will provide an Allowable Sale Quantity of merchantable forest products to industry and help meet Properly Functioning Conditions for stand structure, stand function, and species composition for aspen stands on suitable timberlands in the Mahogany Watershed.

Following conifer harvest, approximately 400 acres of the 600 acres would receive broadcast burning to stimulate aspen regeneration. Again, following conifer harvest, the remaining approximately 200 acres would have conifer slash piled and burned and the remaining aspen trees severed with chainsaws to stimulate aspen regeneration. All treatment units considered for cutting are mature aspen-conifer mixed stands consisting of aspen, Douglas-fir, lodgepole pine, subalpine fir and Engelmann spruce. An estimated 8.0 miles of existing Forest Road would be reconstructed, 0.3 miles of new road would be constructed, and 2.9 miles of existing road would be decommissioned following treatment. Approximately 0.5 miles of road reconstruction would occur on private ground. All merchantable timber would be yarded using ground based systems such as tractors. Natural aspen regeneration is planned and expected for in all the proposed cutting units. Logging slash will be available for firewood to the public on some portions for one year. Ten to fifteen tons per acres of large woody debris will be left in each cutting unit for nutrient recycling.

The issues identified during scoping and the analysis process will determine alternatives to the proposed action. The no action alternative will be analyzed.

DATES: Written comments concerning the scope of the analysis described in this notice should be received within 30 days of the date of publication of this notice in the **Federal Register**. No scoping meeting are planned at this time. Information received will be used in preparation of the draft EIS and final EIS.

ADDRESSES: Send written comments to Caribou-Targhee National Forest, Teton Basin Ranger District, P.O. Box 777, Driggs, Idaho 83422.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Jim Robertson, Caribou-Targhee National Forest, Teton Basin Ranger District, 515 South Main Street, P.O. Box 777, Driggs, Idaho 83422. (Telephone: (208) 354–2312.)

SUPPLEMENTARY INFORMATION: The Forest Service is seeking information and comments from Federal, State and local agencies, as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed.

The responsible official is Jerry B. Reese, Forest Supervisor, Caribou-Targhee National Forest, 1405 Hollipark Dr., Idaho Falls, Idaho 83401.

The decision to be made is: The Forest Service needs to decide whether to continue the present course of action (the no action alternative) or to implement the proposed action with applicable mitigation measures, or to implement an alternative to the proposed action with its applicable mitigation measures.

The tentative date for filing the Draft EIS is August 1, 2004. The tentative date for filing the final EIS is October 1, 2004. The comment period on the draft environmental impact statement will be open for 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give viewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alert an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519,(1978). Also, environmental objections that could be raised at the draft impact statement stage but are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel , 803 F2d 1016,1022(9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period of the Draft Environmental Impact statement so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement. Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process.

To assist the Forest service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentially should be aware that, under FOIA, confidentially may be granted in only limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentially, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

Dated: May 25, 2004.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 04–12391 Filed 6–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Red Pines EIS Project, Nez Perce National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent.

Authorization: 40 CRF 1508.22.

SUMMARY: The Forest Service published a notice of intent to prepare an Environmental Impact Statement for the Red Pines Project published in the **Federal Register** on June 13, 2003 (68 FR 35377, June 13, 2003). Forest Service Policy mandates that a revised notice of intent (NOI) be filed when there is a major change in information included in a notice of intent. This notice announces a change in the Red Pines Project. For the Red Pines Project there is a major change. The project will now include actions that were originally proposed as part of the Red River Salvage project that was discussed in a Predecisional Environmental Assessment released in August 2003. The project area will increase from 31,500 acres to approximately 103,500 acres. The Forest Service will prepare an environmental impact statement to disclose the environmental impacts of implementing fuel hazard reduction and watershed improvement activities within the newly defined Red Pines project area.

DATES: Scoping comments received on either the original Red Pines or the Red River Salvage project will be addressed in the Red Pines draft environmental impact statement, expected to be released in August 2004.

It is not necessary to submit your comments again for them to be considered.

ADDRESSES: Send written comments to Bruce Bernhardt, Forest Supervisor, Nez Perce National Forest, Route 2 Box 475, Grangeville, ID 83530.

FOR FURTHER INFORMATION CONTACT: Ester Hutchison, Project Coordinator, (208) 983–1950.

SUPPLEMENTARY INFORMATION: The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

It is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful an alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in the Red Pines project, as now defined, submit comments by June 18, 2004, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Dated: May 26, 2004.

Michael J. Cook,

Acting Forest Supervisor, Nez Perce National Forest.

[FR Doc. 04–12393 Filed 6–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on June 22 and June 29 in Crescent City, California. The purpose of the meetings is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meetings will be held on June 22 and June 29 from 6 to 8:30 p.m.

ADDRESSES: The meetings will be held at the Del Norte County Unified School District Board Room, 301 West Washington, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to select Title II projects for fiscal year 2005. The meetings are open to the public. Public input opportunity will be provided at each meeting and individuals will have the opportunity to address the committee during that time.

Dated: May 24, 2004.

William D. Metz,

Acting Forest Supervisor.

[FR Doc. 04–12392 Filed 6–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, June 25, 2004. The meeting is scheduled to begin at 9 a.m. and will conclude at approximately 3 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management Office, 1717 Fabry Road SE., Salem, Oregon, (503) 375–5646. The tentative agenda includes: (1) Recommendations on 2005 Projects; and (2) Public Forum. The Public Forum is tentatively scheduled to begin at 9:30 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June 26th meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District, 3225 Highway 20, Sweet Home, Oregon 97386, (541) 367–9220.

Dated: May 21, 2004.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 04–12438 Filed 6–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832]

Carbon and Certain Alloy Steel Wire Rod From Brazil: Notice of Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: June 2, 2004.

FOR FURTHER INFORMATION CONTACT: Carol Henninger or Constance Handley at (202) 482–3003 or (202) 482–0631, respectively; Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A. and BMP Siderúrgica S.A. (collectively, Belgo), a Brazilian producer of subject merchandise, requested an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Brazil on October 31, 2003. On November 28, 2003, the Department published a notice of initiation of the administrative review, covering the period April 15, 2002, through September 30, 2003, (Initiation of Antidumping and Countervailing Duty Administrative Reviews, 68 FR 66799). The preliminary results are currently due no later than July 2, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to the complex issues that have been raised. Specifically, the Department is conducting a scope inquiry in conjunction with this review concerning exclusion language applicable to grade 1080 tire cord and tire bead quality wire rod. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than November 1, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 26, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–12427 Filed 6–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052704A]

Mid-Atlantic Fishery Management Council Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Mackerel, Squid, and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, June 16, 2004, beginning at 9 a.m.

ADDRESSES: This meeting will be held at the Mid-Atlantic Fishery Management Council Office at 300 S. New Street, Room 2115 Federal Building, Dover, DE 19904; telephone: 302–674–2331.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Federal Building, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make quota and management measure recommendations for the Atlantic mackerel, squid, and butterfish fisheries for the 2005 fishing year.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Deborah Donnangelo at the Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 27, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1240 Filed 6–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052604B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries Management in the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted for Secretary of Commerce (Secretary) review Amendment 81 to the Fishery Management Plan (FMP) for the

Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 74 to the FMP for Groundfish of the Gulf of Alaska (GOA). If approved, the amendments would implement a new management policy by revising the goals and objectives of the management of the groundfish fisheries. The goals and objectives would provide for a new ecosystem-based management framework that would serve as the management policy for the groundfish fisheries into the future. This action will promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws. Comments from the public are welcome.

DATES: Comments on Amendments 81 and 74 must be submitted by August 2, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- Fax to 907–586–7557; or
- E-mail to *8174–0648–AS14@noaa.gov*. Include in the subject line of the e-mail comments the following document identifier: 81–74 NOA. E-mail comments, with or without attachments, are limited to 5 megabytes.

Copies of Amendments 81 and 74 and the Programmatic Supplemental Environmental Impact Statement (PSEIS) for the Alaska Groundfish Fisheries may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries/seis/default.htm*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

The Council prepared and the Secretary approved the FMP for Groundfish of the GOA in 1978 and the FMP for the Groundfish Fishery of the BSAI in 1981. Both FMPs have been amended numerous times, and National Environmental Policy Act (NEPA) environmental documents have been prepared for each amendment.

In December 1998, NMFS issued an SEIS for the groundfish fisheries authorized by the FMPs. The U. S. District Court, Western District of Washington at Seattle (NO. C98–0492Z) ruled in *Greenpeace* v. *NMFS* that the 1998 SEIS was legally inadequate, and remanded the document to NMFS for further action consistent with the requirements of NEPA. After an extensive development and public review process, NMFS has completed a new PSEIS for the groundfish fisheries (see **ADDRESSES**). Amendments 81 and 74 are based on the preferred alternative in the PSEIS.

Amendments 81 and 74 were unanimously recommended by the Council in April 2004. If approved by the Secretary, these amendments would revise the goals and objectives of the FMPs to implement a new management policy for the groundfish fisheries. The new management policy would include consideration of community-based or rights-based management and ecosystem-based management principles that protect managed species from overfishing, and where appropriate and practicable, increase habitat protection and bycatch constraints. All management measures would be based on the best scientific information available. The fishery management goals are: (1) sound conservation of the living marine resources, (2) socially and economically viable fisheries and fishing communities, (3) minimal human-caused threats to protected species, (4) healthy marine resource habitat, and (5) ecosystem-based considerations in management decisions. To meet these goals and to focus the Council's consideration of potential management measures, Amendments 81 and 74 identify 45 objectives that are grouped under the following nine subjects: prevent overfishing; promote sustainable fisheries and communities; preserve the food web; manage incidental catch and reduce bycatch and waste; avoid impacts to seabirds and marine mammals; reduce and avoid impacts to habitat; promote equitable and efficient use of fishery resources; increase Alaska native consultation; and improve data quality, monitoring, and enforcement. The new management policy would begin to be implemented immediately upon Secretarial approval and would be applied to ongoing and future groundfish fisheries management. The new management policy also would include adaptive management with regular and periodic reviews, including annual review of the objectives.

Public comments are being solicited on proposed Amendments 81 and 74 through the end of the comment period stated (see **DATES**). All comments received by the end of the comment period on the amendments will be considered in the approval/partial approval/disapproval decision. Comments received after that date will not be considered in the approval/partial approval/disapproval decision on the amendments. To be considered, comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period.

Dated: May 26, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–12437 Filed 6–1–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

May 27, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: June 2, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 69673, published on December 15, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 27, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on June 2, 2004, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	154,494 kilograms.
301	545,895 kilograms.
332	160,906 dozen pairs.
333	22,595 dozen.
334/335	705,958 dozen.
338/339	14,472,350 dozen.
341/641	833,323 dozen.
342/642	591,089 dozen.
345	245,125 dozen.
347/348	7,345,721 dozen.
351/651	438,685 dozen.
359–C/659–C [2]	277,955 kilograms.
434	11,048 dozen.
620	3,175,109 square meters.
632	114,249 dozen pairs.
638/639	1,306,089 dozen.
645/646	150,510 dozen.
647/648	2,123,858 dozen.

[1] The limits have not been adjusted to account for any imports exported after April 30, 2004.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–12426 Filed 6–1–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Request under the North American Free Trade Agreement (NAFTA)

May 27, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for piece-dyed acrylic pile fabrics containing dry-spun acrylic staple fibers.

SUMMARY: On November 12, 2003, the Government of the United States received a request from the Government of Canada alleging that dry-spun acrylic staple fibers, classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 5503.30, cannot be supplied by the Canadian industry in commercial quantities in a timely manner and requesting that the governments of Mexico and the United States consult to consider whether the NAFTA rule of origin for woven-warp pile fabric, cut, which has been dyed in the piece to a single uniform color, classified under HTSUS 5801.35 should be modified to allow the use of non-North American dry-spun acrylic staple fiber.

The President may proclaim a modification to the NAFTA rules of origin only after, inter alia, reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether the dry-spun acrylic staple fiber described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by July 2, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On November 12, 2003, the Government of the United States received a request from the Government of Canada alleging that dry-spun acrylic staple fiber classified under HTSUS subheading 5503.30, cannot be supplied by Canadian producers in commercial quantities in a timely manner and requesting that the Governments of Mexico and the United States consult on whether the NAFTA rule of origin for woven-warp pile fabric, cut, which has been dyed in the piece to a single uniform color, classified under HTSUS 5801.35, should be modified to allow the use of non-North American staple fiber of the type described above.

CITA is soliciting public comments regarding this request, particularly with respect to whether dry-spun acrylic

staple fiber, classified in HTSUS subheading 5503.30, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than July 2, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that dry-spun acrylic staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fiber stating that it produces the fiber that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–12546 Filed 5–28–04; 1:32 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Request under the North American Free Trade Agreement (NAFTA)

May 27, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for woven fabrics of artificial filament yarns containing filament yarns of viscose rayon.

SUMMARY: On May 14, 2004, the Government of the United States received a request from the Government of Mexico alleging that filament yarns of viscose rayon, classified under the Harmonized Tariff Schedule of the United States (HTSUS) heading 5403, cannot be supplied by the North American industry in commercial quantities in a timely manner and requesting that the governments of Canada and the United States consult to consider whether the NAFTA rule of origin for woven fabrics of artificial filament yarn, classified under HTSUS heading 5408 should be modified to allow the use of non-North American filaments yarns of viscose rayon.

The President may proclaim a modification to the NAFTA rules of origin only after, inter alia, reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether filament yarns of viscose rayon can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by July 2, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On May 14, 2004, the Government of the United States received a request from the Government of Mexico alleging that filament yarns of viscose rayon classified under HTSUS heading 5403 cannot be supplied by North American producers in commercial quantities in a timely manner and requesting that the Governments of Canada and the United States consult on whether the NAFTA rule of origin for woven fabrics of artificial filament yarns, classified under HTSUS heading 5408, should be modified to allow the use of non-North American filament yarns of viscose rayon.

CITA is soliciting public comments regarding this request, particularly with respect to whether filament yarns of viscose rayon, classified in HTSUS heading 5403, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than July 2, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that filament yarns of viscose rayon can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–12547 Filed 5–28–04; 1:32 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Futures Market Self-Regulation

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is reopening the comment period for interested parties to comment on proposed amendments to a 1984 agreement (''Joint Audit Agreement'') allocating certain audit and other financial surveillance responsibilities among designated self-regulatory organizations (''DSROs''). The proposed amendments were submitted for Commission approval, and published for comment in accordance with Commission Regulation 1.52(g) and in conjunction with the Commission's ongoing review of the self-regulatory system for futures markets.

DATES: Written comments must be received on or before June 18, 2004.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521, or by electronic mail to *secretary@eftc.gov.* Reference should be made to ''Futures Market Self-Regulation''. This document also will be available for comment at *http://www.regulations.gov.*''

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Associate Deputy Director and Chief Accountant, or Natalie A. Markman, Senior Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418–5450.

SUPPLEMENTARY INFORMATION: On April 12, 2004, the Commission published a notice for request for comment on proposed amendments to the Joint Audit Agreement.[1] The proposed amendments would revise the terms of an agreement entered into by several self-regulatory organizations (''SROs'') in 1984 to allocate some of the supervisory responsibilities that each SRO bears for its member futures commission merchants (''FCMs''). Such supervisory responsibilities are imposed on SROs by various Core Principles of the Commodity Exchange Act (the ''Act''),[2] as amended by the Commodity Futures Modernization Act of 2000.[3] In order to avoid duplicative supervisory burdens upon FCMs that are members of more than one SRO, the Commission permits SROs to enter into voluntary, cooperative agreements to allocate some of their responsibilities among themselves so that each FCM has a single DSRO.

The Commission established a 45-day period for submitting public comment on the proposed amendments to the Joint Audit Agreement, ending May 27, 2004. By letter dated May 18, 2004, an association of futures industry participants requested an extension of the original comment period. In support of the request, the commenter observed that the Commission soon would be publishing another request for comment concerning the governance of SROs, and that industry participants would benefit from an opportunity to review and consider such request for comment for purposes of providing comment on the proposed amendments to the Joint Audit Agreement.

In response to this request and in order to ensure that an adequate opportunity is provided for submission of meaningful comments, the Commission has determined to reopen the comment period on the proposed amendments to the Joint Audit Agreement until June 18, 2004.

Issued in Washington, DC, on May 26, 2004 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–12364 Filed 6–1–04; 8:45 am]

BILLING CODE 6351–01–M

[1] 69 FR 19166 (Apr. 12, 2004).

[2] 7 U.S.C. 1 *et seq.* (2000).

[3] *See* Pub. L. 106–554, 114 Stat. 2763 (Dec. 21, 2000).

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On May 20, 2004, the Department of Education published a notice in the **Federal Register** (Page 29130, Column 3) for the information collection, ''Annual Performance Report Grants Under the Smaller Learning Communities Program''. The total annual hours is hereby corrected from 26,000 to 4,000. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: May 26, 2004.

Angela C. Arrington,

Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 04–12431 Filed 6–1–04; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0110; FRL–7359–4]

Data Generation for Pesticide Reregistration; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Data Generation for Pesticide Reregistration (EPA ICR No. 1504.05, OMB Control No. 2070–0107). This is a request to renew an existing ICR that is currently approved and due to expire on September 30, 2004. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2004–0110, must be received on or before August 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a business engaged in the manufacturing of pesticides and other agricultural chemicals. Potentially affected entities may include, but are not limited to:

- Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., businesses engaged in the manufacture of pesticides.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 3(c)(5) and the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408. The authority for the information collection activities contained in this ICR can be found in section 4 of FIFRA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0110. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and

follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0110. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0110. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0110.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0110. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Data Generation for Pesticide Reregistration.

ICR numbers: EPA ICR No. 1504.05, OMB Control No. 2070–0107.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire September 30, 2004.

Abstract: This information collection is designed to provide EPA with the necessary data for all pesticide active ingredients originally registered before November 1, 1984, to determine whether each pesticide's use poses unreasonable risks to human health or the environment. This information collection allows EPA's Office of Pesticide Programs (OPP) to obtain data needed by OPP scientists to assess and characterize pesticide risks, and for risk managers to determine whether and under what conditions pesticides may be reregistered and reassess existing tolerances to ensure that they meet the standards established by law. Data collected may consist of toxicology studies, residue chemistry studies, fish and wildlife studies, environmental fate studies, or other data needed to analyze the potential risks associated with pesticide chemicals and products. This collection also supports the Agency's reassessment of food tolerances associated with reregistration.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 522,248 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Businesses engaged in the manufacture of pesticides.

Estimated total number of potential respondents: 1,900.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 522,248.

Estimated total annual burden costs: $46,527,696.

VI. Are There Changes in the Estimates from the Last Approval?

The total annual respondent burden estimate for this ICR has increased 431,523 hours, from 90,725 to 522,248, and the total respondent cost has increased $38,885,613, from $7,642,083 to $46,527,696. These increases are adjustments due to the fact that the Agency expects to issue more data call-ins under this program as it begins assessing less complex and less controversial chemicals. In addition, costs have increased due to a rise in labor rates.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 18, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–12308 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPA–2004–0001; FRL–7669–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Oil Pollution Act Facility Response Plan Requirements (40 CFR Part 112) (Renewal), EPA ICR Number 1630.08, OMB Control Number 2050–0135

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 1, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPA–2004–0001, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Solid Waste and Emergency Response (OSWER) Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leigh DeHaven, Office of Solid Waste and Emergency Response, OEPPR, Mail Code 5203G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–9065; fax number: (703) 603–9116; e-mail address: *dehaven.leigh@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 10, 2004 (69 FR 11422), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OPA–2004–0001, which is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Oil Pollution Act Facility Response Plan Requirements (40 CFR Part 112) (Renewal).

Abstract: The authority for EPA's facility response plan requirements is derived from section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20 and 112.21. All facility response plan (FRP) reporting and recordkeeping activities are mandatory. The burden changes in this renewal ICR primarily reflect adjustments to the number of facilities

over time. This information collection request renewal also incorporates impacts associated with a program change to the Spill Prevention, Control and Countermeasure (SPCC) regulations since the last ICR approval (May 2, 2001). EPA issued revisions to the final SPCC regulations on July 17, 2002.

A facility-specific response plan (FRP) will help an owner or operator identify the necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills because of the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can greatly assist local emergency preparedness planning efforts.

EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause ''significant and substantial harm'' to the environment in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill. (*See* 40 CFR 112.20(f)(3) for further information about the criteria for ''significant and substantial harm.'')

None of the information to be gathered for this collection is believed to be confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 60 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The owner or operator of a facility that is required to have a SPCC plan under the Oil Pollution Prevention regulation (40 CFR part 112) and that could cause ''substantial harm'' to the environment must prepare and submit to EPA a facility response plan. (*See* 40 CFR 112.20(b)(1) and (f) for further information about the criteria for substantial harm.'')

Estimated Number of Respondents: 10,644.

Frequency of Response: On occasion, as needed.

Estimated Total Annual Hour Burden: 634,994.

Estimated Total Annual Cost: $17,931,000, includes $21,000 annual startup/capital costs, $0 annual O&M costs and $17,910,000 annual labor costs.

Changes in the Estimates: There is an increase of 51,864 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment to account for growth of the affected facility universe over time. This increase is partially offset, however, due to program changes to the Spill Prevention, Control, and Countermeasure (SPCC) Plan regulations that exclude wastewater treatment facilities.

Dated: May 21, 2004.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 04–12416 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0084; FRL–7361–4]

Establishment of the Endocrine Disruptor Methods Validation Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Establishment of Federal Advisory Committee Act Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2 section 9(a)(2)), we are giving notice that EPA is establishing the Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC). The purpose of this Committee is to provide a forum for a diverse group of individuals representing a broad range of interests and scientific expertise. It will provide advice to the Agency on matters related to the validation of assays under consideration by the Endocrine Disruptor Screening Program (EDSP). The Committee will analyze relevant scientific issues, protocols, review data and interpretations of data for the assays. The major objective of the Committee is to provide advice and recommendations to the EPA Administrator on scientific and technical aspects of the assays as they progress through the validation process. EPA has determined that this advisory committee is in the public interest and will assist the Agency in performing its duties as prescribed by the Food Quality Protection Act of 1996. Copies of the Committee Charter will be filed with the appropriate congressional committees and the Library of Congress.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Jane Smith, Designated Federal Official, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8476, fax: (202) 564–8283; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. You may be interested in the establishment of the committee set forth in this notice if you are a member of an environmental/public interest organization, a public health organization, an animal welfare organization, academia or Federal agencies, state, local, or tribal governments. You also may be interested in activities of EPA's EDSP if you produce, manufacture, use, consume, work with, or import pesticides or other chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding this action, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may access this **Federal Register** document electronically through the EPA Internet site under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Information about the former Endocrine Disruptor Methods Validation Subcommittee, the Endocrine Disruptor Screening Program and related programs is available from *http://www.epa.gov/scipoly/oscpendo/*.

EPA has established an official public docket for the EDMVAC under docket identification (ID) number OPPT–2004–0084. The official public docket consists of the documents related to the activities of the committee and any public comments received. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.2. Once in the system, select ''search,'' then key in the appropriate docket ID number.

2. *In person*. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0272.

3. *By mail*. You may obtain copies of this document and other related documents from the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Endocrine disruptors, Endocrine Disruptor Screening Program, Endocrine Disrupor Methods Validation Advisory Committee.

Dated: May 18, 2004.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc 04–12419 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0170; FRL–7362–1]

The Association of American Pesticide Control Officials, State FIFRA Issues Research and Evaluation Group, Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on June 28, 2004, and ending June 29, 2004. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, June 28, 2004, from 8:30 a.m. until 5 p.m., and Tuesday, June 29, 2004, from 8:30 until noon.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Army-Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov*,

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@vtlink.net*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. All parties are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or FIFRA.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0170. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. EPA inspection credentials guidance.

2. Mosquito labeling—proposal, **Federal Register** notice, request for comment.

3. Endangered Species Protection Program/update—new approach expectations for state lead agencies (SLAs).

4. Regional reports/regional cooperative enforcement agreement priorities/new issues papers, action items.

5. SFIREG working committees/reports and issue paper(s).

6. Activity based multiple reentry interval proposals/update.

7. Renovated issue papers/format, process, and existing issue papers.

8. Indemnification/waivers of liability.

9. SFIREG WQ/PD working committee report/pesticide product disposal/labeling language—label review manual/review and recommendations.

10. Label language risk mitigation measures/OECA–OPP.

11. Definition of shallow ground water.

List of Subjects

Environmental protection.

Dated: May 24, 2004.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 04–12418 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7669–5]

Clean Air Act Advisory Committee (CAAAC) Notice of Meeting/Request for Nominations to the CAAAC

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 Section 10 (a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, June 24, 2004, from approximately 8:30 a.m. to 3:30 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC. Seating will be available on a first come, first served basis. The Economics Incentives and Regulatory Innovations Subcommittee and a CAAAC workgroup addressing the National Academy of Science Report on Air Quality Management will hold meetings on Wednesday, June 23, 2003 from approximately 8:30 a.m to 3:30 p.m. at the Renaissance Mayflower, the same location as the full Committee. The Permits, New Source Reviews and Toxics Subcommittee will be having a public meeting of the Title V Task Force on June 25, 2004. The location of the meeting will be at the Washington Marriott Hotel 1221 22nd Street NW., Washington DC from approximately 9 a.m. to 5 p.m. Seating will be available on a first come, first served basis. Two of the CAAAC's Subcommittees, the Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; and the Mobile Source Technical Review Panel will not meet at this time. The schedule for the Wednesday meetings is: The NAS workgroup will meet at 8:30 a.m. to 12:30 am, and the subcommittee on Economics Incentives and Regulatory Innovations will meet at 1:30 p.m. to 3:30 p.m.

Request for Nominations: The U.S. Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to the Clean Air Act Advisory Committee and its subcommittees. Suggested deadline for receiving nominations is July 16, 2004. Appointments will be made by the Administrator of the Environmental Protection Agency. Appointments for the full CAAAC committee are expected to be announced during November of 2004. Nominee's qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups. Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as community-based experience. Contact details should include full name and title, business mailing address, telephone, fax, and e-mail address. A supporting letter of endorsement is encouraged but not required.

ADDRESSES: Submit nomination materials to: Pat Childers, Designated Federal Officer, Clean Air Act Advisory Committee, U.S. EPA (6102A) 1200 Pennsylvania Ave, Washington, DC 20004, T: 202 564–1082, F: 202 564–1352, e-mail *childers.pat@epa.gov.*

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

FOR FURTHER INFORMATION CONTACT: For further information concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittee meetings, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; and (2) Linking Transportation, Land Use and Air Quality Concerns—Robert Larson, 734–214–4277; and (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667. Additional Information on these meetings, CAAAC and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

Dated: May 26, 2004.

Elizabeth Craig,

Acting Principal Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 04–12415 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0237; FRL–7360–5]

Organophosphate Pesticides; Availability of Interim Risk Management Decision Documents for Methyl Parathion for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60-day public comment period on the interim Reregistration Eligibility Decision (IRED) document for the pesticide active ingredient methyl parathion. This decision document was developed as part of the public participation process that EPA and U.S. Department of Agriculture (USDA) are now using for

involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The IRED document represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket ID number OPP–2003–0237, must be received on or before August 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John Pates, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8195; e-mail address: *pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0237. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA

will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select'' search,'' and then key in docket ID number OPP–2003–0237. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0237. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0237.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0237. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

What Action is the Agency Taking?

EPA has assessed the risks of methyl parathion and reached an Interim Reregistration Eligibility Decision (IRED) for this organophosphate pesticides(s). Provided that risk mitigation measures are adopted, methyl parathion fits into its own risk cup —its individual, aggregate risks are within acceptable levels. EPA has determined that products containing methyl parathion are eligible for reregistration except for use on the following crops: cabbage, dried beans, dried peas, hops, lentils, pecans, and sugar beets. The use of eligible methyl parathion products in accordance with labeling specified in this IRED will not pose unreasonable adverse effects to humans or the environment. These products will be reregistered once the required confirmatory generic data, product specific data, CSFs, and revised labeling are received and accepted by EPA. Products which contain active ingredients in addition to methyl parathion will be reregistered when all of their other active ingredients also are eligible for reregistration.

The interim risk management decision for methyl parathion was made through the organophosphate pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. EPA worked extensively with affected parties to reach the decisions presented in the interim risk management decision documents.

Several studies were submitted by the registrants during Phase 6 of the public process as a result of a August 1999 Memorandum of Agreement between the EPA and the methyl parathion registrants. As a result of review and consideration of these studies, the occupational assessment for methyl parathion was revised. Even though numerous opportunities for public comment were offered as these interim risk management decision documents were being developed, the public has not had an opportunity to comment on the revised assessment. Therefore, the methyl parathion interim risk management decision document is issued with a formal 60-day public comment period to allow interested parties to review and comment on the revised worker assessment. Although the EPA will accept comment on any aspect of the risk assessment, we recommend that any comment suggesting changes to the mitigation should be substantiated by data.

The risk assessments for methyl parathion were released to the public through a notice published in the **Federal Register** on December 18, 1998 (63 FR 70126) (FRL–6052–6) and August 13, 1999 (64 FR 44219) (FRL–6093–4).

EPA's next step under FQPA is to complete a cumulative risk assessment and risk management decision for the organophosphate pesticides, which share a common mechanism of toxicity. The interim risk management decision documents on methyl parathion cannot

be considered final until this cumulative assessment is complete.

When the cumulative risk assessment for the organophosphate pesticides has been completed, EPA will issue its final tolerance reassessment decision(s) for methyl parathion and further risk mitigation measures may be needed.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 21, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–12307 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0159; FRL–7360–8]

Metam-Sodium; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the human health and environmental fate and effects risk assessments and related documents for metam-sodium. This notice also starts a 60–day public comment period for the risk assessments. Comments are to be limited to issues directly associated with metam-sodium and raised by the risk assessments or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The Agency cautions that these risk assessments for metam-sodium are preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket ID number OPP–2004–0159, must be received on or before August 2, 2004. Metam-sodium is under a Natural Resources Defense Council consent decree deadline for publication of revised risk assessments by August 31, 2004. Consequently, the Agency requests that you submit your comments on the preliminary risk assessments as soon as possible, so that they can be given thorough consideration.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Veronique C. LaCapra, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–605–1525; e-mail address: *lacapra.veronique@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for metam-sodium, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0159. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0159. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0159. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004– 0159.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0159. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and**Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility decisions for the organophosphates and other pesticides consistent with FFDCA, as amended by FQPA. Metam-sodium does not have tolerances under FFDCA and thus is not subject to tolerance reassessment. The Agency's human health and environmental fate and effects risk assessments and other related documents for metam-sodium are available in the individual pesticide docket. As additional comments,

reviews, and risk assessment modifications become available, these will also be docketed for metam-sodium.

The Agency cautions that the metam-sodium risk assessments are preliminary and that further refinements may be appropriate. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessments for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessments and associated documents. All comments should be submitted by August 2, 2004, using the methods in Unit I. Metam-sodium is under an NRDC consent decree deadline for publication of revised risk assessments by August 31, 2004. Consequently, the Agency requests that you submit your comments on the preliminary risk assessments as soon as possible, so that they can be given thorough consideration. Comments will become part of the Agency record for metam-sodium.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 17, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–12341 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0139; FRL–7359–3]

Aminopyralid; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0139, must be received on or before July 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *Joanne Miller@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultual producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 110)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0139. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public

viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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C. How and to Whom Do I Submit Comments?

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1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0139. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

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iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

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3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0139. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included, in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical

in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2004.

Betty Shackleford,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroScience, LLC and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Dow AgroSciences, LLC

PP 7F4851

EPA has received a pesticide petition PP 7F4851 from Dow AgroSciences, LLC 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of combined residues of aminopyralid (XDE–750: 4-amino-3,6-dichloropyridine-2-carboxylic acid) and its glucose conjugate, expressed as total parent in or on the raw agricultural commodity grass forage at 25 parts per million (ppm), grass hay at 65 ppm, wheat forage at 2 ppm, wheat hay at 4 ppm, wheat grain at 0.05 ppm, wheat straw at 0.5 ppm, wheat bran at 0.1 ppm, wheat middlings at 0.02 ppm, wheat shorts at 0.05 ppm, wheat flour at 0.01 ppm, wheat germ at 0.02 ppm, wheat aspirated grain fractions at 0.5 ppm. Tolerances of the parent, aminopyralid (free) are also proposed for milk at 0.02 ppm, cream at 0.02 ppm, edible animal tissues except kidney at 0.05 ppm and kidney at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants (grass and wheat) and in animals is adequately understood for the purpose of this tolerance. Based on the findings from these metabolism studies, the residues of concern in grass and wheat are the combined residues of aminopyralid and its glucose conjugates, expressed as the total parent. In animal commodities, the residue of concern is only the parent, aminopyralid (free).

2. *Analytical method*. Adequate analytical methods for enforcement purposes are available to monitor residues of aminopyralid in grass and wheat commodities, milk, meat and meat by-products. The analytical method uses liquid chromatography and positive ion electrospray tandem spectrometry (LC/MS/MS) with limits of quantitation (LOQ) of 0.01 ppm. The methods had been successfully validated independently by outside laboratories. Aminopyralid had also been tested through the Food and Drug Administration (FDA), Multi-residue Methodology, Protocols C, D, and E.

3. *Magnitude of residues*. Geographically representative field trials were conducted on grass pasture and wheat according to use patterns to support the proposed tolerances in these commodities. In addition, wheat processing and cow feeding studies were conducted to determine transfer of residues into wheat processed products, milk, meat and meat by-products. The proposed tolerances in grass and wheat commodities and in milk, meat and meat by-products are adequate to cover the highest residues from the maximum label use of aminopyralid in grass pasture and wheat.

B. Toxicological Profile

1. *Acute toxicity*. Aminopyralid has low acute toxicity. The rat oral lethal dose $(LD)_{50}$ is >5,000 milligrams/kilogram (mg/kg) and the rat inhalation LC_{50} is >5.5 milligrams per liter (mg/L). In addition, aminopyralid is not a dermal sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows ocular irritation in rabbits.

2. *Genotoxicty*. Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* chromosomal aberration assay using rat lymphocytes, and an *in vitro* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with aminopyralid. Taken together, these studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Developmental studies in rats and rabbits were conducted with aminopyralid. Studies with aminopyralid showed maternal no observed effect levels (NOELs) of 1,000 milligrams/kilogram/day (mg/kg/day) (rat) and 250 mg/kg/day (rabbit) and fetal NOELs of 1,000 mg/kg/day (rat) and 500 mg/kg/day (rabbit). These studies show that aminopyralid is not teratogenic nor will it interfere with *in utero* development. A multi-generation reproduction study conducted with aminopyralid in Sprague-Dawley rats showed a NOEL for reproductive effects of 1,000 mg/kg/day for males and 1,000 females (highest dose tested). The NOEL for neonatal effects was also 1,000 mg/kg/day.

4. *Subchronic toxicity*. Aminopyralid showed a NOEL of 100 mg/kg/day in a 28–day rat dermal study. 90–day feeding studies with aminopyralid showed NOELs of 100 mg/kg/day in Fischer 344 rats, 257 mg/kg/day in Beagle dogs, and 1,000 mg/kg/day in CD-1 mice.

5. *Chronic toxicity*. Based on chronic testing with aminopyralid in the mouse, dog, and rat, a reference dose (RfD) of 0.5 mg/kg/day is proposed. The RfD has incorporated a 100–fold safety factor to the NOEL found in the rat chronic test. NOELs found in the chronic dietary studies are as follows: 96 mg/kg/day (male and female dogs), 250 mg/kg/day in female mice and 1,000 mg/kg/day in male mice, and 50 mg/kg/day in male Fischer 344 rats and 500 mg/kg/day in female Fischer 344 rats.

6. *Animal metabolism*. Aminopyralid has been evaluated in a rat metabolism study. In summary, this study shows that aminopyralid is efficiently cleared through the urine and feces with an average of 74–93% of the administered radioactivity excreted during the first 24–hours post-dose administration. Aminopyralid is rapidly absorbed and urinary and fecal elimination totaled 41–59 and 33–43% of the administered dose, respectively. Analysis of excreted material indicate no evidence of metabolism. Repeated administration of aminopyralid was not associated with accumulation in tissues.

7. *Metabolite toxicology*. No mammalian metabolites of aminopyralid

have been identified in the rat metabolism study. Nature of residue studies in wheat and grass (three species) revealed the presence of unchanged parent aminopyralid and glucose conjugates of aminopyralid.

8. *Endocrine disruption*. There is no evidence to suggest that aminopyralid has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. In conducting the potential dietary exposure and risk assessments, Dow AgroSciences used the Dietary Exposure Evaluation Model (DEEM), Version 7.87, Exponent) software that evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture 1994–1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII). The dietary exposure assessment was performed using a conservative approach (Tier I) wherein the estimated theoretical maximum residue contribution (TMRC) was based on the assumptions that 100% of the crops were treated with aminopyralid and the residues were present at the proposed tolerance levels.

The chronic population adjusted dose (cPAD) used was 0.50 mg/kg/day based on a NOEL of 50 mg/kg/day from a 2–year combined chronic feeding/carcinogenicity rat study and an uncertainty factor of 100 (10 for intraspecies variation x 10 for interspecies variation). No additional FQPA safety factor is required. For the U.S. general population, the theoretical maximum residue contribution (TMRC) was estimated to be 0.000237 milligrams/kilogram (mg/kg/day) that utilized less than 0.1% of the chronic population adjusted dose (cPAD). The population subgroup with the highest potential exposure is children 1–2 years old with a TMRC of 0.000933 mg/kg/day that represents only 0.2% of the cPAD. The percent of the cPAD is significantly below the acceptable 100%, therefore, demonstrates no chronic dietary concern.

No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicological studies on aminopyralid. Thus, the risk from acute exposure is considered negligible and no acute risk assessment was performed.

ii. *Drinking water*. No monitoring exposure data are available to complete a comprehensive dietary exposure analysis and risk assessment for aminopyralid in drinking water.

Guidance from EPA has indicated that Tier 1 screening level models, such as generic expected environmental concentration (GENEEC) and screening concentration in ground water (SCI–GROW), maybe used to estimate upper-bound pesticide residues in surface water and ground water when assessing potential exposure through drinking water. Estimated environmental concentrations (EEC) of pesticide in surface water or ground water are then compared to a drinking water level of comparison (DWLOC). DWLOC is not a regulatory standard for drinking water but a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. DWLOC determines how much of the acceptable exposure PAD is available for exposure through drinking water. In calculating DWLOC, default values for body weights and water consumption were used: 2 Liter/70 kilogram (2L/70 kg) adult male, 2L/60 kg adult female and 1L/10 kg child.

The concentration of aminopyralid in surface water using GENEEC is 4.4 µg/L. For ground water, the estimated concentration by SCI–GROW is 1.6 µg/L. As shown below the EECs in surface water and ground water are substantially below the DWLOC. Therefore, exposure to aminopyralid in drinking water would not result in unacceptable levels of aggregate human health risk.

2. *Non-dietary exposure*. Aminopyralid is not currently registered for use on any sites that would result in residential exposure. Therefore, considerations of aggregate exposure to aminopyralid will not include non-dietary or residential exposures.

Population Group	cPAD/milligrams/kilogram body weight/day (mg/kg bwt/day)	Dietary Exposure[a]	DWLOC[b]	EEC µg/Liter (µg/L)	
				Surface water	Ground water
U.S. population (total)	0.50	0.000237	17492	4.4	1.6
All infants (<1 year old)	0.50	0.000270	4997	4.4	1.6
Children (1–2 years old)	0.50	0.000933	4991	4.4	1.6
Females (13–49 years old)	0.50	0.000145	14996	4.4	1.6

[a] From DEEM Analysis.
[b] DWLOC = (cPAD - Dietary Exposure) x Body weight, kg/Drinking water consumption, L x 1,000.

D. Cumulative Effects

At this time, no data are available to determine whether aminopyralid has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, aminopyralid does not appear to produce a common toxic metabolite generated by other substances. For purposes of this tolerance action, therefore, it is assumed that aminopyralid does not have a mechanism of toxicity common with other substances.

E. Safety Determination

1. *U.S. population*. Using the above conservative exposure assumptions, aggregate exposure to aminopyralid from the proposed tolerances in wheat and animal commodities will utilize less than 0.1% of the cPAD for the general U.S. population. The population subgroup with the highest exposure of 0.2% of the cPAD is children 1–2 years old. Generally, EPA has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposures over a lifetime will not pose appreciable risks to human health. No endpoint of concern was identified to quantitate acute-dietary risk to the general population, therefore, acute risk exposure is considered to be negligible. Additionally, the potential contribution of aminopyralid residues in drinking water to aggregate exposure is expected to be minimal. Calculated DWLOCs for assessing aggregate dietary risk ranged from 4991 µg/L children 1–2 years old to 1,7492 µg/L; U.S. population which are more than 4,000–10,000 greater than the potential environmental water concentration. Therefore, based on these risk assessments, Dow AgroSciences concludes, that there is reasonable

certainty that no harm will result to the U.S. population from aggregate exposure to aminopyralid residues.

2. *Infants and children*. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for aminopyralid relative to prenatal and postnatal effects for children is complete. Overall, aminopyralid had no effect on reproduction or embryo-fetal development at any dosage tested. No quantitative or qualitative susceptibility was seen following prenatal and postnatal exposures. In a 2-generation reproductive toxicity study in rats, no effects on reproductive performance or neonatal development were observed. Dow AgroSciences concluded that there is no indication of increased sensitivity of infants and children relative to adults and that no additional Food Quality Protection Act (FQPA) safety factor is required. Using the above conservative assumptions, aggregate exposure to aminopyralid will utilize only 0.1% of the cPAD for all infants <1 year old, 0.2% of the cPAD for children 1–2 years old and 0.1% of the cPAD for children 6–12 years old. Even when considering the potential exposure to drinking water, the aggregate exposure is not expected to exceed 100% of the cPAD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences concludes, with reasonable certainty that no harm will result to infants and children from the aggregate exposure to aminopyralid residues.

F. International Tolerances

No Codex maximum residue levels are established for residues of aminopyralid on any food or feed crop. Therefore, no compatibility problems exist for the proposed tolerances.

[FR Doc. 04–12020 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0185; FRL–7361–1]

Thiamethoxam; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0185, must be received on or before July 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5409; e-mail address:*daniel.dani@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food Manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0185. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0185. The system is an''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0185. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0185.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0185. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities

under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding theelements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives,Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemicalresidues or an explanation of why no such method is needed.

Syngenta Crop Protection Inc. and Interregional Research Project #4

PP 2E6363, 3E6781, 3E6800, 3E6806, 3E6805, 3E6807, 4E6819, 9F5051 and 0F6142

EPA has received pesticide petitions (PP 2E6363, 3E6781, 3E6800, 3E6806, 3E6805, 3E6807, 4E6819, 9F5051 and 0F6142) from Syngenta Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419-8300 and Interregional Research Project #4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902-3390, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine] (CAS Reg. No. 153719–23–4) and its metabolite [*N*-(2-chloro-thiazol-5-ylmethyl)-*N*′-methyl-*N*″-nitro-guanidine) in or on the raw agricultural commodities peppermint and spearmint, tops at 4.0 parts per million (ppm); legume vegetables (succulent or dried) at 0.02 ppm; root vegetables (except sugar beet) crop subgroup (1b) at 0.10 ppm and for radish tops at 0.80 ppm; strawberry at 0.30 ppm; cranberry at 0.01 ppm; bushberry crop subgroup (13B) and juneberry, lingonberry and salal at 0.25 ppm; rapeseed, seed; Indian rapeseed; Indian mustard, seed; field mustard, seed; black mustard, seed; flax, seed; safflower, seed; crambe, seed; and borage, seed at 0.02 ppm; grapes at 0.15 ppm; grape juice at 0.20 ppm and raisins at 0.30 ppm; a tolerance increase for tuberous and corm crop subgroup (1C) from 0.02 ppm to 0.25 ppm; leafy vegetables (except brassica vegetables) at 2.0 ppm; leafy brassica greens crop subgroup 5B at 2.0 ppm; and head and stem brassica crop subgroup 5A at 1.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The primary metabolic pathways of thiamethoxam in plants (corn, rice, pears, and cucumbers) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound and CGA-322704 were the major residues in all crops. The metabolism of thiamethoxam in plants and animals is understood for the purposes of the proposed tolerances. Parent thiamethoxam and the metabolite, CGA-322704, are the residues of concern for tolerance setting purposes.

2. *Analytical method*. Syngenta Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. The method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 ng injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 ppm for all other substrates.

3. *Magnitude of residues*. IR-4 has submitted complete residue data for thiamethoxam on peppermint and spearmint tops; legume vegetables; root and tuber vegetables (except sugar beet); strawberry; cranberry; bushberry subgroup plus juneberry, lingonberry and salal; and oil seed crops.

Syngenta has submitted complete residue data for the proposed tolerances on leafy vegetables, head and stem brassica vegetables, leafy brassica vegetables, grape commodities and the proposed increase in tolerance for the tuberous and corm vegetable subgroup.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} for thiamethoxam in the rat is 1,563 milligrams per kilogram of bodyweight(mg/kg bw). The acute dermal LD_{50} of thiamethoxam is >2,000 mg/kg bw. Thiamethoxam is non-toxic at atmospheric concentrations of 3.72 milligrams per liter (mg/l). Thiamethoxam is minimally irritating to the eye, non-irritating to skin and is not a dermal sensitizer.

In an acute neurotoxicity screening study in rats (OPPTS 870.6200), the no observed adverse effect level (NOAEL) was 100 milligrams per kilograms per day (mg/kg/day) with a NOAEL of 500 mg/kg/day based on drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength (males only). At higher dose levels, mortality, abnormal body tone, ptosis, impaired respiration, tremors, longer latency to first step in the open field, crouched over posture, gait impairment, hypo-arousal, decreased number of rears, uncoordinated landing during the righting reflex test, slight lacrimation (females only) and higher mean average input stimulus value in the auditory startle response test (males only).

2. *Genotoxicty*. In gene mutation studies with *S. typhimurium* and *E. coli* (OPPTS 870.5100 and 870.5265, there was no evidence of gene mutation when tested up to 5,000 µg/plate and there was no evidence of cytotoxicity.

In a gene mutation study with chinese hamster V79 cells at HGPRT focus (OPPTS 870.5300) there was no evidence of gene mutation when tested up to the solubility limit.

In a CHO cell cytogenetics study (OPPTS 870.5375) there was no evidence of chromosomal aberrations when tested up to cytotoxic or solubility limit concentrations.

An *in vivo* mouse bone marrow micronucleus study (OPPTS 870.5395) was negative when tested up to levels of toxicity in whole animals; however, no evidence of target cell cytotoxicity. A UDS assay (OPPTS 870.5550) was negative when tested up to precipitating concentrations.

3.*Reproductive and developmental toxicity*. A prenatal developmental study in the rat (OPPTS 870.3700) resulted in Maternal and Developmental NOAELs of 30 mg/kg/day and 200 mg/

kg/day, respectively. The maternal lowest observed adverse effect level (LOAEL) is 200 mg/kg/day based on decreased body weight, body weight gain and food consumption. The developmental LOAEL was 750 mg/kg/day based on decreased fetal body weight and an increased incidence of skeletal anomalies.

A prenatal developmental study in the rabbit (OPPTS 870.3700) resulted in maternal and developmental NOAELs of 50 mg/kg/day. The maternal and developmental LOAEL is 150 mg/kg/day. The maternal LOAEL is based on maternal deaths, hemorrhagic discharge, decreased body weight and food intake during the dosing period. The developmental LOAEL is based on decreased fetal body weights, increased incidence of post-implantation loss and a slight increase in the incidence of a few skeletal anomolies/variations.

In a reproduction and fertility effects study in rats (OPPTS 870.3800) the Parental/systemic NOAEL is 1.84 (males), 202.06 (females) mg/kg/day; the reproductive NOAEL is 0.61 (males) , 202.06 (females) mg/kg/day and the offspring NOAEL is 61.25 (males), 79.20 (females) mg/kg/day. The parental/systemic LOAEL is 61.25 (males), not determined (females) mg/kg/day based on increased incidence of hyaline change in renal tubules in F_0 and F_1 males. The reproductive LOAEL is 1.84 (males), not determined (females) mg/kg/day based on increased incidence and severity of tubular atrophy observed in testes of the F_1 generation males. The offspring LOAEL is 158.32 (males), 202.06 (females) mg/kg/day based on reduced body weight gain during the lactation period in all litters.

4. *Subchronic toxicity.* A 90 day oral toxicity study in rats (OPPTS 870.3100) resulted in a NOAEL of 1.74 (males, 92.5 (females) mg/kg/day. The LOAEL is 17.64 (male), 182.1 (female) mg/kg/day based on increased incidence of hyaline change of renal tubules epithelium (males), fatty change in adrenal gland of females, liver changes in females, all at the LOAEL.

A 90 day oral toxicity study in mice (OPPTS 870.3100) resulted in a NOAEL of 1.41 (males), 19.2 (females) mg/kg/day. The LOAEL was 14.3 (male), 231 (female) mg/kg/day based on increased incidence of hepatocellular hypertrophy. At higher dose levels: decrease in body weight and body weight gain, necrosis of individual hepatocytes, pigmentation of Kupffer cells, and lymphocytic infiltration of the liver in both sexes; slight hematologic effects and decreased absolute and relative kidney weights in males; and ovarian atrophy, decreased ovary and spleen weights and increased liver weights in females.

In a 90 day oral toxicity study in dogs (OPPTS 870.3150), the NOAEL is 8.23 (males), 9.27 (females) mg/kg/day. The LOAEL is 32.0 (male), 33.9 (female) mg/kg/day based on slightly prolonged prothrombin times and decreased plasma albumin and A/G ration (both sexes); decreased calcium levels and ovary weights and delayed maturation in the ovaries (female); decreased cholesterol and phospholipid levels, testis weights, spermatogenesis, and spermatic giant cells in testes (male).

In a 28 day dermal study in rats (OPPTS 870.3200) the NOAEL was 250 (male), 60 (female) mg/kg/day. The LOAEL was 1,000 (male), 250 (female) mg/kg/day based on increased plasma glucose, triglyceride levels, and alkaline phosphatase activity and inflammatory cell infiltration in the liver and necrosis if single hepatocytes in females and hyaline change in renal tubules and a very slight reduction in body weight in males. At higher dose levels in females, chronic tubular lesions in the kidneys and inflammatory cell infiltration in the adrenal cortex were observed.

In a subchronic neurotoxicity screening study in rats (OPPTS 870.6200) the NOAEL was 95.4 (male), 216.4 (female) mg/kg/day, both at highest dose tested. The LOAEL was not determined. No treatment related observations at any dose level. LOAEL was not achieved. May not have been tested at sufficiently high dose levels; however, a new study is not required because the weight of the evidence from other toxicity studies indicates no evidence of concern.

5.*Chronic toxicity*. In a chronic toxicity study in dogs (OPPTS 870.4100) the NOAEL was 4.05 (male), 4.49 (female) mg/kg/day. The LOAEL was 21.0 (male), 24.6 (female) mg/kg/day based on increase of creatinine in both sexes, transient decrease in food consumption in females, and occasional increase in urea levels, decrease in ALT, and atrophy of seminiferous tubules in males.

In a mouse carcinogenicity study (OPPTS 870.4200) the NOAEL was 2.63 (male), 3.68 (female) mg/kg/day. The LOAEL was 63.8 (male), 87.6 (female) mg/kg/day based on hepatocyte hypertrophy, single cell necrosis, inflammatory cell infiltration, pigment deposition, foci of cellular alteration, hyperplasia of Kupffer cells and increased mitotic activity, also an increase in the incidence of hepatocellular adenoma (both sexes). At higher doses, there was an increase in the incidence of hepatocelluar adenocarcinoma (both sexes) and the number of animals with multiple tumors, evidence of carcinogenicity.

In a combined chronic caricinogenicity study in rats (OPPTS 870.4300) the NOAEL was 21.0 (male), 50.3 (female) mg/kg/day. The LOAEL was 63.0 (male), 255 (female) mg/kg/day based on increased incidence of lymphocytic infiltration of the renal pelvis and chronic nephropathy in males and decreased body weight gain, slight increase in the severity of hemosiderosis of the spleen, foci of cellular alteration in liver and chronic tubular lesions in kidney in females. No evidence of carcinogenicity.

In a hepatic cell proliferation study in mice, the NOAEL was 16 (male), 20 (female) mg/kg/day. The LOAEL was 72 (male), 87 (female) mg/kg/day based on proliferative activity of hepatocytes. At higher dose levels, increases in absolute and relative liver weights, speckled liver, heptocellular glycogenesis/fatty change, heptocellular necrosis, apoptosis and pigmentation were observed.

In a 28 day feeding study to assess replicative DNA synthesis in the male rat, the NOAEL was 711 mg/kg/day. The LOAEL was not established. Immunohistochemical staining of liver sections from control and high dose animals for proliferating cell nuclear antigen gave no indication for a treatment related increase in the fraction of DNA syntesizing hepatocytes in S-phase. CGA293343 did not stimulate hepatocyte cell proliferation in male rats.

In a special study to assess liver biochemistry in the mouse, the NOAEL was 17 (male), 92 (female) mg/kg/day. The LOAEL was 74 (male), 92 (female) mg/kg/day based on marginal to slight increases in absolute and relative liver weights, a slight increase in the microsomal protein content of the livers, moderate increases in the cytochrome P450 content, slight to moderate increases in the activity of several microsomal enzymes, slight to moderate induction of cytosolic glutathionw S-transfersase activity. Treatment did not affect peroxisomal fatty acid B-oxidation.

6. *Animal metabolism*. The metabolism of thiamethoxam in rats and livestock animals is adequately understood. The residues of concern have been determined to be parent thiamethoxam and its metabolite (*N*-(2-chloro-thiazol-5-ylmethyl)-*N'*methyl-N''-nitro-guanidine.

7. *Metabolite toxicology*. For most risk assessment purposes, residues of the metabolite corrected for molecular weight are considered to be toxicologically equivalent to parent

thiamethoxam. However, EPA has determined that the metabolite should not be included in cancer risk assessment.

C. Aggregate Exposure

1. *Dietary exposure*. Permanent tolerances have been established (40 CFR 180.565) for the combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine and it's metabolite (*N*-(2-chloro-thiazol-5-ylmethyl)-N′-methyl-N″-nitro-guanidine), in or on a variety of RACs at levels ranging from 0.02 ppm to 1.5 ppm (including barley, canola, coffee (imported), corn, cotton, cucurbit vegetables, fruiting vegetables, pecans, pome fruits, sorghum, stone fruits, succulent beans, sunflowers, wheat, tuberous and corm vegetables and livestock commodities).

Pending tolerances include: brassica (head and stem), brassica (leafy), bushberry subgroup (plus lingonberry, juneberry and salal), cranberry, grapes (fruit, raisins and juice), leafy vegetables, legume vegetable group, mint (peppermint and spearmint tops), oil seed crops (mustards, rapes, crambe, flax, safflower and borage), root vegetable (except sugar beets) subgroup and strawberry and a proposed tolerance increase for tuberous and corm vegetables.

Tier I acute, tier II chronic and tier III cancer dietary exposure evaluations were made using the Dietary Exposure Evaluation Model (DEEM®), version 7.76 from Exponent. All processing factors were taken from the EPA assessment of August 28, 2000 (DP Barcode D268606, PC Code 060109). Tolerance values have been established (40 CFR 180.565(a)) for the combined residues of both thiamethoxam (CGA-293343) and its metabolite (CGA-322704) in or on a variety of raw agricultural commodities including meat, milk and eggs. These assessment results include all registered uses and proposed uses on mint, leafy vegetables, leafy Brassica vegetables, Brassica head and stem vegetables, grapes, cranberries, strawberries, oilseed crops, legume vegetables (crop subgroup 6), bushberries (crop subgroup 13B), root vegetables (except sugarbeets, crop subgroup 1B) and soybeans.

For the tier I acute assessment, the proposed tolerance residues for these commodities (mint, 4.0 ppm; oilseed crops, 0.02 ppm; leafy vegetables, 2.0 ppm; leafy brassica vegetables, 2.0 ppm; brassica head and stem vegetables, 1.0 ppm; strawberries, 0.30 ppm; grapes, 0.15 ppm; grape juice, 0.20 ppm; grape raisins, 0.30 ppm; cranberries, 0.01 ppm; bushberries, 0.25 ppm; root vegetables subgroup 1A and 1B (except sugar beets), 0.10 ppm, root vegetables subgroup 1C, 0.25 ppm; legume vegetables, 0.02 ppm and soybeans, 0.02 ppm) were used along with the published tolerances for all other commodities. One-hundred percent of crop treated was assumed for all commodities in the acute assessment.

In the tier II chronic assessment, the residue of concern was the sum of CGA-293343 and CGA-322704. Addition of the proposed crops mentioned above to the animal diets did not increase the previously calculated dietary burdens for any livestock commodities. Therefore, the residue values for secondary animal commodities were taken from the EPA assessment of August 28, 2000 which uses average field trial residue data with one-half limit of quantitation (LOQ) substitutions for all non-detectable residues. For the remaining registered and the proposed commodities listed above, the following residue data was used in the DEEM®: cucurbit, leafy and Brassica vegetables and tomatoes - average field trial residues from soil-only (Platinum) application residue studies; stone fruits, mint, succulent beans, sunflower seed, and coffee - average field trial residue data with one-half LOQ substitutions for non-detectable residues; all other commodities - the proposed tolerances listed in the acute section above.

For the cancer assessment, the residue values used for all animal commodities were the same as those used in the chronic assessment. For all of the remaining commodities, the residue of concern was only CGA-293343 since CGA-322704 was found to be ''not carcinogenic to humans'' (EPA Memorandum, 12/24/03, DP Barcode 278328). Residue values were taken from field trial data where thiamethoxam was applied at the maximum labeled use rate and resulting crops were harvested at the minimum labeled PHI. For a number of crops, average residue values from field trials with soil-only (Platinum) applications of thiamethoxam were calculated to reflect currently proposed use directions. These crops included: leafy vegetables (crop group 4), Brassica vegetables (crop group 5), cucurbit vegetables (crop group 9) and fruiting vegetables (except peppers). Non-detectable residue values for these crops were substituted with a value of one-half LOQ. For the remaining crops, the average field trial residue values with one-half LOQ substitutions for non-detectable residues were used in the assessment if available and proposed tolerance residues were used if the field trial data was not available.

All consumption data for these assessments was taken from the USDA's Continuing Survey of Food Intake by individuals (CSFII) with the 1994-96 consumption database and the Supplemental CSFII children's survey (1998) consumption database. For the chronic and cancer assessments, the percent of crop treated values for all proposed crops were estimated by Syngenta Crop Protection according to current pest pressures and competitor's products. All other percent of crop treated values were estimated from the 2000-2003 Doane's Agricultural Marketing Service Database.

i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed. The Tier I acute assessment utilized tolerance values and 100% of crop treated values. The Tier II chronic and Tier III cancer assessments utilized the residue and percent of crop treated values described above.

a. *Acute exposure.* An acute reference dose of 0.10 mg/kg-bw/day for all population subgroups was based on a NOAEL of 100 mg/kg-bw/day from an acute neurotoxicity study in rats and an uncertainty factor of 100X (100X for combined interspecies and intraspecies variability). An additional FQPA safety factor of 10X was applied to all population subgroups due to the absence of a developmental neurotoxicity study. For the purpose of aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE). The MOE was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the acute reference dose (%aRfD). Acute exposure to the most exposed sub-population (children 1 - 2 years old) resulted in a MOE of 6,873 (14.6 % of the acute RfD (aRfD) of 0.10 mg/kg-bw/day) at the 95th percentile of exposure. Since the benchmark MOE for this assessment was 1,000 and since EPA generally has no concern for exposures below 100% of the aRfD, Syngenta believes that there is a reasonable certainty that no harm will result from acute dietary (food) exposure to residues arising from the current and proposed uses for thiamethoxam.

b. *Chronic exposure.* The chronic reference dose (RfD) for thiamethoxam is 0.0006 mg/kg-bw/day for all population subgroups and is based on a NOAEL of 0.6 mg/kg-bw/day from a two

generation rat reproduction study. An uncertainty factor of 100X (for combined interspecies and intraspecies variability) and an additional FQPA safety factor of 10X was applied due to evidence of increased susceptibility to young rats following pre-/postnatal exposure. Exposure was expressed as MOE and percent of the reference dose (%RfD). Chronic exposure to the most exposed sub-population (children 1-2 years old) resulted in a MOE of 5,607 (17.8% of the chronic RfD of 0.0006 mg/kg-bw/day). Since the benchmark MOE for this assessment was 1,000 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from chronic dietary (food) exposure to residues arising from the current and proposed uses for thiamethoxam.

c. *Lifetime exposure.* The Q* value for thiamethoxam is 0.0377 $(mg/kg/day)^{-1}$ and is based on benign and malignant heptocellular tumors in mice in an 18–month carcinogenicity study. Lifetime exposure to the U.S. population of 0.000023 mg/kg-bw/day resulted in a Lifetime Risk of 8.63×10^{-7} which represents 86.3% of the EPA's Lifetime Risk limit of 1.0×10^{-6}.

ii. *Drinking water.* The EPA used the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. Based on the SCI-GROW and PRZM/EXAMS models, the EPA calculated that estimated environmental concentrations of thiamethoxam at the highest use rate (0.125 lb active ingredients/Acre) are 1.9 parts per billion (ppb) for acute and chronic exposure to ground water and 7.1 ppb and 0.43 ppb for acute and chronic exposure, respectively, to surface water. The EPA model-estimated estimated environenmental concentrations (EECs) are used below for comparison to Drinking Water Levels of Comparison (DWLOC) for hte acute, chronic and cancer assessments.

a. *Acute drinking water risk.* Acute DWLOC were calculated based on an acute Populated Adjusted Dose (aPAD) of 0.1 mg/kg/day. For the acute assessment, the children (1-2 years old) subpopulation generated the lowest acute DWLOC of 854 ppb. The EPA has determined that the surface water acute EEC is 7.1 ppb and the ground water EEC is 1.9 ppb. Since the surface water value is greater than the ground water value, the surface water value will be used for comparison purposes and will protect for any concerns for ground water concentrations. Since the acute DWLOC of 854 ppb is considerably higher than the acute EEC of 7.1 ppb, the EPA should not have a concern for acute risk to either surface or ground water.

b. *Chronic drinking water risk.* Chronic DWLOC were calculated based on a chronic Populated Adjusted Dose (cPAD) of 0.0006 mg/kg/day. For the chronic assessment, the children (1-2 years old) subpopulation generated the lowest chronic DWLOC of approximately 4.9 ppb. The EPA has determined that the surface water chronic EEC is 0.43 ppb and the ground water EEC is 1.9 ppb. Since the ground water value is greater than the surface water value, the ground water value will be used for comparison purposes and will protect for any concerns for surface water concentrations. Since the chronic DWLOC of 4.9 ppb is higher than the chronic EEC of 1.9 ppb, the EPA should not have a concern for chronic risk to either surface or ground water.

c. *Lifetime cancer drinking water risk.* Based on currently registered and proposed uses for thiamethoxam, Syngenta has determined a DWLOC for Lifetime Exposure of 2.0 ppb. At the currently registered maximum use rate of 0.125 lbs. active ingredient per acre per growing season, the EPA has used the SCI-GROW model to predict a ground water EEC of 1.9 ppb and used PRZM/EXAMS to predict a long-term average surface water EEC of 0.13 ppb. Since neither the ground water EEC nor the long-term average surface water EEC exceeds the cancer DWLOC for the general population, the cancer drinking water risk is below the EPA's level of concern.

The EPA SCI-GROW model is a conservative screening level tool specifically designed to estimate pesticide concentrations in shallow ground water based on only three parameteres: use rate, laboratory determined aerobic soil degradation half life, and soil organic matter adsorption partition coefficient (K_{oc}). The model is not able to separately predict acute and long-term average concentrations. A number of factors lead the EPA to believe that the actual lifetime exposure through drinking water will be less than the Lifetime DWLOC. These reasons are as follows:

(a) Thiamethoxam is a systemic pesticide. The EPA's Tier I ground water model assumes that all of the product that is applied to the crop is available for runoff. Syngenta has submitted data to show that a percentage (15-25%) of the product is absorbed by the plant, resulting in that much less product available to leach into ground water. Although data submitted is on only two crops (beans and cucumbers), it is likely that the total amount of thiamethoxam available for ground water leaching is less than the amount the EPA uses as a model input.

(b) Although the Agency model is based on aerobic soil half lives, the EPA's Lifetime Risk assessment is for lifetime exposure. Data indicate the anaerobic aquatic half-life for thiamethoxam is shorter than the aerobic soil half-life and longer than the aerobic aquatic half-life. Although the EPA is unable to predict, with a high degree of certainty, what happens to thiamethoxam in ground water over time, this does provide some support for the expectation that concentrations in ground water will decline between annual applications.

(c) Shallow ground water modeling is not the perfect model for representing all drinking water from ground water sources. It is likely to be an overestimate of most drinking water concentrations, which tend to originate from deeper sources. The EPA's experience is that the model is reasonably accurate for shallow drinking water, but the Agency believes that it is less accurate for estimating concentrations in drinking water from deeper sources.

(d) The Agency has established conditions of registration for the previous uses that include two prospective ground water studies and a retrospective monitoring study, so that the reasonable certainty of no harm finding will be sustained.

(e) The dietary food risk is based on residue data derived from the average of field trials, which were performed at a higher application rate than what was accepted by the EPA. It is not unusual in the Agency's experience for field trial data to be an order of magnitude above actual monitoring. Since thiamethoxam has only recently been registered, actual monitoring data is not yet available. It is likely that the actual risk contribution from food will be much lower than current data indicate, which would result in a larger lifetime DWLOC. EPA should expect that this refined lifetime DWLOC would be larger than the EECs for the proposed uses.

Based on the previous points, the EPA should not expect that the general population would be exposed to levels exceeding the lifetime DWLOC

2. *Non-dietary exposure.* Thiamethoxam is not currently registered for use on any sites that would result in residential exposure.

D. Cumulative Effects

The potential for cumulative effects of thiamethoxam and other substances that have a common mechanism of toxicity has also been considered. Thiamethoxam belongs to a new pesticide chemical class known as the neonicotinoids. There is no reliable information to indicate that toxic effects produced by thiamethoxam would be cumulative with those of any other chemical including another pesticide. Therefore, Syngenta believes it is appropriate to consider only the potential risks of thiamethoxam in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Syngenta concludes, as described above, that there is reasonable certainty that no harm to the U.S. population will result from aggregate acute or chronic dietary exposure to thiamethoxam residues including the proposed commodities.

2. *Infants and children.* Syngenta concludes, as described above, that there is reasonable certainty that no harm to infants and children will result from aggregate acute or chronic dietary exposure to thiamethoxam residues including the proposed commodities.

F. International Tolerances

There are no Codex MRLs established for residues of thiamethoxam.

[FR Doc 04–12311 Filed 6–1–04; 8:45 a.m.]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0117; FRL–7357–8]

Cloquintocet Mexyl; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of apesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0117, must be received on or before July 2, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions asprovided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: *gandhi.bipin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agriculturalproducer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0117. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is

restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0117. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0117. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0117.

3. *By hand delivery or courier*. Deliver your comments to:Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0117. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at

this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Syngenta Crop Protection Inc.

PP 4E6831

EPA has received a pesticide petition (4E6831) from Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, North Carolina, 27419–8300 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.560 by establishing tolerances for the combined residues of cloquintocet-mexyl, (acetic acid, [(5-chloro-8-quinolinyl)oxy-, 1-methylhexyl ester) (CAS Reg. No. 99607–70–2) and its acid metabolite (5-chloro-8-quinolinoxyaceticacid) when used as an inert ingredient (safener) in pesticide formulations containing either the herbicide clodinafop-propargyl or pinoxaden in a 1:4 ratio of safener to active ingredient in or on the following raw agricultural commodities: Wheat, grain at 0.10 parts per million (ppm); wheat, forage at 0.2 ppm; wheat, hay at 0.50 ppm; wheat, straw at 0.10 ppm; barley, grain at 0.01 ppm; barley, hay at 0.10 ppm; and barley, straw at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Syngenta's previous Notice of Filing (NOF) indicated the metabolism of cloquintocet-mexyl in wheat is well understood, as published in the **Federal Register** of April 19, 2000 (65 FR 20972) (FRL–6554–3). Total residues in all crop samples are low. Metabolism involves primarily rapid hydrolysis of the parent to the resulting acid followed by conjugation.

2. *Analytical method*. Syngenta Crop Protection, Inc. has submitted practical analytical methodology for detecting and measuring combined levels of cloquintocet-mexyl and its acid metabolite 5-chloro-8-quinolinoxylacetic acid. The method is based upon acid hydrolysis extraction, which converts the parent and all conjugates to the acid metabolite. The acid metabolite is subject to commodity specific cleanup procedures and High Performance Liquid Chromatography (HPLC) determination with triple stage quadruple mass spectrometry (LC/MS/MS). The limit of quantitation (LOQ), as demonstrated by the lowest acceptable recovery samples, is 0.01 ppm for grain and 0.02 ppm for forage, hay and straw.

3. *Magnitude of residues*. In support of registration of cloquintocet-mexyl on wheat, a total of 21 field trials were conducted by the petitioner on wheat per EPA region requirements in 16 states (CO, NC, ND,NM, MT, MO, TX, CA, KS, SD, OK, IL, WA, NE, AK, MN). In support of registration of pinoxaden on barley, a total of 12 field trials were conducted on barley per EPA region requirements in 10 states (VA, SD, MN, WI, ND, CO, CA, ID, WA, MT). The magnitude of the residue program supports the setting of tolerances on all types of wheat and barley crops.

B. Toxicological Profile

1. *Acute toxicity*. Cloquintocet-mexyl has a low order of acute toxicity. The acute toxicity profile of cloquintocet-mexyl was published previously in the **Federal Register** in the petitioner's (NOF) (65 FR 20972) (FRL–6554–3) (April 19, 2000). EPA has published the acute toxicity endpoints in the **Federal Register** in its final rule (65 FR 38757) (FRL–6592–4) (June 22, 2000).

2. *Genotoxicity*. Cloquintocet-mexyl was negative in all genotoxicity tests. The genotoxicity of cloquintocet-mexyl was published previously in **Federal Register** in the petitioner's NOF (65 FR 20972) (FRL–6554–3) (April 19, 2000).

3. *Reproductive and developmental toxicity*. Cloquintocet-mexyl is not a reproductive or developmental toxicant. The toxicity of cloquintocet-mexyl was published previously in the **Federal Register** in the petitioner's NOF (65 FR 20972, April 19, 2000). EPA has published the reproductive and developmental toxicity endpoints in the **Federal Register** in its final rule (65 FR 38757, June 22, 2000).

4. *Subchronic toxicity*. The subchronic toxicity profile ofcloquintocet-mexyl was published previously in the **Federal Register** in the petitioner's NOF (65 FR 20972, April 19, 2000). EPA has previously published the subchronic toxicity endpoints in the **Federal Register** in its final rule (65 FR 38757, June 22, 2000).

5. *Chronic toxicity*. The chronic toxicity profile of cloquintocet-mexyl was published previously in the **Federal Register** in the petitioner's NOF (65 FR 20972, April 19, 2000). EPA has published the chronic toxicity endpoints in the **Federal Register** in its final rule (65 FR 38757, June 22, 2000). The Agency classified cloquintocet-mexyl as ''not likely to be a human carcinogen.''

6. *Animal metabolism*. The metabolism of cloquintocet-mexyl in animals is well understood, as was published previously in the **Federal Register** in the petitioner's NOF (65 FR 20972, April 19, 2000). In rats, approximately 50% of an oral dose of cloquintocet-mexyl was rapidly absorbed through the gastrointestinal tract and excreted via urine and bile. The administered dose was excreted independent of sex and was essentially complete within 48 hours. Ninety-five percent of the excreted dose was associated with one metabolite, the acid residue of cloquintocet-mexyl, 5-chloro-8-quinlinoxyacetic acid.

7. *Metabolite toxicology*. The main metabolite in both plants and animals is 5-chloro-8-quinolinoxyacetic acid. As this is the main metabolite in rats, rabbits and mice, its toxicology has been tested throughout the toxicology database for cloquintocet-mexyl. The toxicity of cloquintocet-mexyl metabolites was discussed previously in the **Federal Register** in the petitioner's NOF (65 FR 20972, April 19, 2000).

8. *Endocrine disruption*. There is no evidence that cloquintocet-mexyl has any effect on endocrine function, as was discussed previously in the **Federal Register** in the petitioner's NOF (65 FR 20972, April 19, 2000).

C. Aggregate Exposure

1. *Dietary exposure*. Tier I acute and chronic dietaryexposure evaluations were made by the Agency using the Dietary Exposure Evaluation Model (DEEM™), version 7.87 from Exponent. DEEM™ default processing factors were used in these assessments. All consumption data for these assessments was taken from the USDA's Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–96 consumption database and the Supplemental CSFII children's survey (1998) consumption database. These exposure assessments included uses on wheat and barley. Secondary residues in animal commodities were estimated based on theoretical worst-case, yet nutritionally adequate animal diets and transfer information from metabolism studies.

i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Syngenta Crop Protection has estimated aggregate exposure from all crops for which tolerances are established or proposed. These assessments utilized proposed tolerances on wheat and barley commodities and calculated residue values for secondary animal commodities. Percent of crop treated values for wheat and barley were estimated based upon economic, pest and competitive pressures. An acute reference dose of 1.0 milligram/kilogram body weight/day (mg/kg bwt/day) was based on a no observable adverse effect level (NOAEL) of 100 mg/kg bwt/day from a developmental toxicity study in the rat and an uncertainly factor of 100X. No additional FQPA safety factor was applied. The cloquintocet-mexyl Tier I acute (deterministic) dietary exposure assessment was based upon tolerance residue values. For the purpose of aggregate risk assessment, the exposure value was expressed in terms of margin of exposure (MOE) which was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the acute reference dose (%RfD). Acute exposure to the most sensitive subpopulation (children 1–2 years) resulted in a MOE of 606,061 (0.02% of the acute RfD of 1.0 mg/kg bwt/day). Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current and proposed uses for cloquintocet-mexyl. The chronic reference dose (RfD) for cloquintocet-mexyl is 0.043 mg/kg bwt/day and is based on a combined chronic toxicity/carcinogenicity study in the rat with a NOAEL of 4.3 mg/kg bwt/day and an uncertainly factor of 100X. No additional FQPA safety factor was applied. The cloquintocet-mexyl Tier I chronic dietary exposure assessment was based upon tolerance residue values. For the purpose of aggregate risk assessment, the exposure values were expressed in terms of margin of exposure (MOE) which was calculated by dividing the NOAEL by the exposure for each population subgroup. In addition, exposure was expressed as a percent of the reference dose (%RfD). Chronic exposure to the most exposed subpopulation (children 1–2 years) resulted in a MOE of 62,319 (0.20% of the chronic RfD of 0.043 mg/kg bwt/day). Since the benchmark MOE for this assessment was 100 and since EPA generally has no concern for exposures below 100% of the RfD, Syngenta believes that there is a reasonable certainty that no harm will result from dietary (food) exposure to residues arising from the current and proposed uses for cloquintocet-mexyl.

ii. *Drinking water*. Another potential source of exposure of the general population to residues of cloquintocet-mexyl are residues in drinking water. Estimated Environmental Concentrations (EECs) of cloquintocet-mexyl in drinking water were determined by the EPA. The EPA ground water model Screening Concentrations in Groundwater (SCI-GROW) was used to determine acute and chronic estimated environmental concentrations (EECs) in ground water and the Agency's surface water model GENEEC was used to determine acute and chronic EECs in surface water. Based on the EPA's GENEEC and SCI-GROW model outputs, the EECs for acute exposures are estimated to be 0.038 ppb for surface water and 0.0060 ppb for ground water. The EECs for chronic exposures are estimated to be 0.053 ppb for surface water and 0.0060 ppb for ground water.

Syngenta's acute Drinking Water Levels of Comparisons (DWLOC) were calculated based on an acute reference dose of 1.0 mg/kg/day. The most sensitve subpopulation (children 1–2 years) generated an acute DWLOC of approximately 9,998 ppb. Thus, the acute DWLOC is considerably higher than the acute EEC of 0.006 ppb.

Syngenta's Chronic Drinking Water Levels of Comparison (DWLOC) were calculated based on a chronic Population Adjusted Dose (cPAD) of 0.03 mg/kg/day. The children 1 and 2 years old subpopulation generated the lowest chronic DWLOC of approximately 429 ppb. Thus, the chronic DWLOC is considerably higher than the chronic EEC of 0.0060 ppb.

2. *Non-dietary exposure*. Products containing the safener cloquintocet-mexyl will be registered for agricultural uses only and will not be available for any residential or public uses. Therefore, the aggregate risk is the sum of the risk from food and water.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' A discussion of the availability of data for determination whether cloquintocet-mexyl has a common mechanism of toxicity with other substances was included in the **Federal Register** in EPA's final rule (65 FR 38757, June 22, 2000).

E. Safety Determination

1. *U.S. population*. The chronic dietary exposure analysis (food only) showed that exposure from all established and proposed cloquintocet-mexyl uses would be 0.20% of the cRfD for the most sensitive subpopulation, children 1 and 2 years old. In its final rule EPA determined that reliable data support using the standard MOE and uncertainty factor (100 for combined interspecies and intraspecies variability) for cloquintocet-mexyl and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Acute DWLOCs were calculated based on an acute RfD of 1.0 mg/kg/day. For the acute assessment, children 1 and 2 years old subpopulation generated an acute DWLOC of approximately 9,998 ppb. The acute EEC of 0.006 ppb is considerably less than 9,998 ppb. For the chronic assessment, the children 1 and 2 years old subpopulation generated the lowest chronic DWLOC of 429 ppb. Thus, the chronic DWLOC of 429 ppb is considerably higher than the chronic EEC of 0.006 ppb.

2. *Infants and children*. Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the chronic or acute RfD and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to cloquintocet-mexyl.

F. International Tolerances

There are no international tolerances for the inert (safener), cloquintocet-mexyl.

[FR Doc. 04–12315 Filed 6–1–04; 8:45 am]

BILLING CODE 6560–50–S

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Public Meeting/Workshop and Opportunity for Public Discussion

SUMMARY: This notice announces a meeting/workshop by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) Interagency Working Group on Earth Observations (IWGEO) to address the effective use of Earth observations systems to benefit humankind.

DATES: The Interagency Working Group on Earth Observations will hold a two-day workshop on Wednesday, June 16, 2004, 8:30 a.m. to 5:30 p.m. (e.d.t.); Thursday, June 17, 2004, 8:30 a.m. to 4:30 p.m.

ADDRESSES: All sessions of the workshop will be held at the United States Geological Survey (USGS), 12201 Sunrise Valley Drive, Reston, Virginia 20192.

FOR FURTHER INFORMATION CONTACT: For information regarding this notice, please contact Carla Sullivan, National Oceanic and Atmospheric Administration. Telephone: (202) 482–5921. E-mail: *carla.sullivan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background: During the June 16–17, 2004, public meeting and workshop, the IWGEO will provide a forum to gather inputs and viewpoints on the technical and scientific capacity of current Earth observation systems. These systems will be reviewed according to the social/economic benefits specified by the CENR Subcommittees and IWGEO.

Purpose of the Workshop: The workshop will allow representatives of the communities-of-practice to contribute information and facts to the IWGEO as it prepares a U.S. 10-Year Plan for Developing an Integrated Earth Observing System. Strategic social/economic benefit areas include:

1. Reducing Loss of Life and Property from Disasters.
2. Protecting and Monitoring Ocean Resources.
3. Understanding Climate, and Assessing, Mitigating, and Adapting to Climate Change Impacts.
4. Supporting Sustainable Agriculture and Combating Land Degradation.
5. Understanding the Effect of Environmental Factors on Human Health and Promoting Well Being.
6. Developing the Capacity to Make Ecological Forecasts.
7. Protecting and Monitoring Water Resources.

Public Participation: Due to space constraints, interested parties will need to register for this meeting. Deadline for registration is June 7, 2004, or when capacity of facility is met. *See* IWGEO Web page for registration materials and additional information: *http://iwgeo.ssc.nasa.gov/documents.asp,* or contact the IWGEO Secretariat office: Carla Sullivan, Interagency Working Group on Earth Observations (IWGEO), National Oceanic and Atmospheric Administration (NOAA), 1401 Constitution Avenue, NW., Washington, DC 20230. Telephone: (202) 482–5921, telefax: (202) 482–5181. E-mail: *carla.sullivan@noaa.gov.* Subject: IWGEO June Community-of-Practice Experts meeting/workshop.

The National Science and Technology Council (NSTC) was established under Executive Order 12881. The CENR is chartered under the NSTC. The purpose of the CENR is to advise and assist the NSTC, with emphasis on those federally supported efforts that develop new knowledge related to improving our understanding of the environment and natural resources.

Ann F. Mazur,

Assistant Director for Budget and Administration.

[FR Doc. 04–12533 Filed 6–1–04; 8:45 am]

BILLING CODE 3170–W4–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—May 13, 2004 (open).

B. Reports

—FCS Building Association Quarterly Report.

C. New Business

1. Regulations

—Capital Adequacy Risk-Weighting Revisions—Proposed Rule.
—Credit and Related Services—Final Rule.

2. Other

—Agribank Request to Amend Related Services List to Allow Farm Credit Banks to Offer Financial Risk Management to Customers.

Dated: May 27, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–12512 Filed 5–27–04; 5:11 pm]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, June 7, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may

contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–12609 Filed 5–28–04; 2:05 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Partners Invited To Participate in the National HIV Testing Day Initiative

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) seeks to partner with other public and private sector organizations to support a Federal initiative to promote greater testing for HIV. This initiative will support and promote National HIV Testing Day, which will be held on June 27, 2004. HHS, in coordination with the National Association of People With AIDS, is planning events in various cities across the United States to support National HIV Testing Day. The goal of these events is to raise awareness about HIV/AIDS in at-risk communities, promote early detection and assist HIV-positive individuals to obtain treatment. The National HIV Testing Day Partnership initiative is not a grant or contract award program, and each partner will be responsible for supporting its own activities. Working together, it is intended that these partnerships will provide innovative opportunities to promote greater testing for HIV and to help HIV-positive individuals to obtain treatment.

DATES: Comments expressing or affirming an interest in activities of the National HIV Testing Day Partnership will be most useful if received as soon as possible or by June 10.

ADDRESSES: Expressions of interest, comments and questions may be sent to the following e-mail address, *MGomez@OSOPHS.DHHS.GOV* or by FAX to: Miguel Gomez, Office of Public Health and Science, the Office of the Secretary, U.S. Department of Health and Human Services, at 202–690–7560.

Representatives of interested organizations also may call the following information line: 202–690–5560. Callers will be directed to appropriate agency officials for further discussions.

SUPPLEMENTARY INFORMATION: HHS is the United States government's principal agency for promoting and protecting the health of all Americans. HHS manages many programs, covering a broad spectrum of health promotion and disease prevention services and activities. Leaders in the business community, State and local government officials, tribes and tribal entities and charitable, faith-based, and community organizations have expressed interest in partnering with the Department to promote healthy choices and behaviors. HHS welcomes this interest. With this notice, HHS outlines opportunities for these and other entities to partner with HHS in order to assist in developing activities that will promote and support the June 27 National HIV Testing Day. These activities will be carried out consistent with HHS's broad statutory authorities found in Title XVII of the Public Health Service (PHS) Act and other HHS program statutes. In general, section 1704 of the PHS Act, among other authorized activities, provides authority for the Secretary to conduct activities to make information respecting health or health promotion, preventative health services, and health education available to the public, and to encourage others to support such activities.

Presently, 40 million people are living with HIV/AIDS worldwide, with approximately 950,000 cases in the U.S. The Centers for Disease Control and Prevention (CDC) is concerned that the estimated one-quarter (180,00–280,000) of the persons living with HIV who are unaware of their status are not receiving life-saving treatment and may unknowingly transmit HIV to others. CDC estimates approximately 40,000 new individuals become infected with HIV cases annually. Data suggest that 40 percent of new infections are transmitted by those who do not yet know they are infected. Approximately 20 million HIV tests are performed annually at all testing sites, including more than two million tests administered at publicly-funded HIV counseling and testing sites.

In April of 2003, the CDC announced a new initiative, Advancing HIV Prevention (AHP): New Strategies for a Changing Epidemic, focusing on reducing barriers to diagnosis of HIV infection and access, to and use of, quality medical care, treatment, and ongoing prevention services for persons with HIV. AHP maintains target services to high-risk groups.

The National HIV Testing Day Partnership initiative will encourage all U.S. communities to participate in Testing Day events and is likely to include events in a number of cities. Cities under consideration are Atlanta, GA; Ft. Lauderdale, FL; Kansas City, MO; New York, NY; Orlando, FL; San Antonio, TX; and Los Angeles, CA. HHS officials are considering participating in a wide range of local events that will support HIV testing in these six cities. HHS will encourage its grantees and others to support Testing Day events around the U.S.

In addition, HHS would like to support and promote this important Testing Day with a more widespread and comprehensive public education campaign. This initiative can only be successful through a public/private partnership to support such a large-scale nationwide event to support and promote the National HIV National Testing Day. Consequently, the involvement of both public and private organizations is necessary. For efforts of this magnitude, the Department periodically invites outside organizations to join in carrying out activities of mutual interest to achieve shared objectives. These partnerships are voluntary. The parties work together to carry out their respective, consistent missions for the common good.

In order to implement activities that will support and promote the National HIV Testing Day, HHS is interested in establishing partnerships with private corporations and other entities, including charitable, faith-based, and community organizations, as well as with State and local governments, that can help extend the initiative's reach. In accordance with each entity's particular strengths and abilities, partnerships will be established. Note that each partner must participate substantively in the initiative and be responsible for providing the resources necessary to carry out its specified activities of mutual interest.

As partners with HHS, both public and private sector organizations can bring to this initiative their respective ideas and expertise, administrative capabilities, and production and material resources, that are consistent with the goals of the National HIV Testing Day Partnership initiative. For example:

(a) Share in the distribution of educational health information to the public regarding the promotion of HIV prevention activities; and the availability of HIV counseling and testing; and

(b) Participate in the development of a public education campaign to

highlight June 27 as the National HIV Testing Day and to promote the importance of HIV testing by using local or national media participation.

Partnership agreements will make clear that there will be no Federal endorsement of the products or services of particular companies and organizations. HHS will have a right to review the use of Department logos and statements related to partnership activities on such materials and products to ensure that they are suitable for the initiative and that government neutrality with respect to such products and services is maintained. National HIV Testing Day is a registered trademark of the National Association of People with AIDS.

Evaluation Criteria

After engaging in exploratory discussions of potential partnerships and partnership activities with respondents, HHS will use the following considerations, as appropriate and relevant, to determine whether HHS will engage in partnership activities with particular entities and the scope of those activities.

1. Are the activities proposed by the offering entity likely to provide a substantial public health benefit, consistent with HHS goals and its initiative to promote greater testing for HIV, spotlighting the June 27 National HIV Testing Day?

2. Does the proposed partnership's potential for public health benefit outweigh any potential negative impact on the agency and its ability to accomplish its missions? What adjustments if any, would make the proposal acceptable?

3. Is there an identifiable and appropriate role for HHS and the potential partner?

4. Does the outside entity have the expertise and capacity to carry out its proposed activities?

5. Has the outside entity demonstrated a willingness to work collaboratively with other public and private sector organizations to achieve national awareness of the importance of HIV testing?

Given the National HIV Testing Day Partnership initiative's objectives, entities which have similar goals and consistent interests, appropriate expertise and resources, and would like to pursue activities that will support and promote the National HIV Testing Day within their own organizations, or on a broader scale, in collaboration with the Department, are encouraged to reply to this notice. Working together, it is intended that these partnerships will provide innovative opportunities to promote greater HIV testing.

Dated: May 25, 2004.

Christopher A. Bates,

Acting Director, Office of HIV/AIDS Policy.

[FR Doc. 04–12243 Filed 6–1–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Solicitation of Research Pertinent to the Communication of the 2005 Dietary Guidelines

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) provides notice of the solicitation of communication research reports pertinent to the sixth edition of Nutrition and Your Health: Dietary Guidelines for Americans, expected to be released in early 2005.

Organizations have expressed an interest in sharing their research findings with HHS. This is not a request for research proposals nor will monetary reimbursement be provided for research submitted.

DATES: Research materials must be received by 5 p.m. E.S.T. on August 31, 2004.

ADDRESSES: Research materials may be sent to the E-mail address *dietaryguidelines@osophs,dhhs.gov,* or mailed to Dietary Guidelines Communications, Department of Health and Human Services, Office of Disease Prevention and Health Promotion, 200 Independence Avenue, SW., Room 738–G, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Christine Dobday, HHS Project Officer for the Dietary Guidelines Communications, or Kathryn McMurry, HHS Dietary Guidelines Co-Executive Secretary by phone at 202–690–7102, or by writing the following address: Department of Health and Human Services, Office of Disease Prevention and Health Promotion, 200 Independence Avenue, SW., Room 738–G, Washington, DC 20201. Additional information is available on the Internet at *http://www.health.gov/dietaryguidelines.*

SUPPLEMENTARY INFORMATION: The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445, Title III) requires the Secretaries of HHS and USDA to publish Nutrition and Your Health: Dietary Guidelines for Americans at least every five years. The sixth edition of the Dietary Guidelines is expected to be jointly released by HHS and USDA in early 2005. HHS is collaborating with USDA on the development of health messages and communication materials to support the 2005 Dietary Guidelines targeted to the public and intermediaries—government agencies and other organizations, health policy professionals, health communicators, nutrition educators, the media and other intermediaries.

Research: By this notice, the Committee is soliciting submission of research (qualitative and quantitative) pertinent to the development of communications supporting the Dietary Guidelines for Americans. The research submitted may be used as guidance in the development of health messages and materials, and their dissemination to various target audiences. HHS may share the research it receives with internal and external entities working on the 2005 Dietary Guidelines Communications. Research for purposes of this notice should pertain to the subject areas relevant to the Dietary Guidelines (*e.g.*, nutrition, physical activity, energy balance, food safety) and may address audience segmentation, trends, messages, content, communication vehicles and/or channels, education programs, interactive tools, etc. For those submitting research reports, please provide a summary report, final report, or topline that includes the research purpose, objectives, target audiences, methodology, date(s) conducted and location(s), intended use, conclusions/recommendations and note if sponsored or underwritten and by whom. Research submitted will be considered in the public domain, meaning it may not be considered proprietary. There is no reimbursement for research provided nor is this a request for research proposals. Furthermore, research provided should not in any way be deemed as Federally endorsed simply because it has been submitted in response to this notice. Submission of research does not guarantee its use. Please indicate whether you would be available for an oral presentation of your research should we contact you and request so.

Dated: May 27, 2004.

Penelope S. Royall,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Department of Health and Human Services.

[FR Doc. 04–12422 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–56]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

ACHES (Arthritis Conditions Health Effects Survey)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

Arthritis and other rheumatic conditions are among the most prevalent diseases and are the most frequent cause of disability in the United States. Health care costs for arthritis were estimated at $86.2 billion for 1997. In 2001, an estimated 33% of U.S. adults (70 million) reported prior diagnosis of arthritis or chronic joint symptoms. As the U.S. population increasingly ''grays,'' the economic and disability burden from arthritis will only grow.

Fortunately, arthritis can be successfully managed and its impacts lessened. Exercise, weight loss, medications, joint replacement surgeries and educational and sociobehavioral interventions can decrease pain as well as improve physical function and quality of life and reduce health care costs. Unfortunately, relatively little is known nationally about persons with arthritis or chronic joint symptoms to better target these interventions. Current national health surveys and databases have extremely limited coverage about arthritis and the myriad of issues surrounding the conditions.

CDC plans to conduct ACHES (Arthritis Conditions Health Effects Survey) to close the information gaps about arthritis. ACHES is a national random digit dial telephone survey dedicated solely to arthritis for the purpose of gathering information on symptoms, limitations, physical functioning levels, effects of arthritis on work, knowledge and attitudes about arthritis, self management of arthritis, current physical activity, anxiety, depression, and demographics of 4,500 persons age 45 years and older with arthritis. The information from it will be used to better direct and target national arthritis control efforts. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/ response (in hrs)	Total burden hours
Screened adult	25,000	1	3/60	1,250
Adult over 45 with arthritis	4,500	1	30/60	2,250
Total	29,500			3,500

Dated: May 26, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–12439 Filed 6–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5033–N]

Medicare Program; Establishment of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End Stage Renal Disease Services and Request for Nominations for Members

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for End Stage Renal Disease (ESRD) Services and discusses the group's purpose and charter. It also solicits nominations for members.

DATES: Nominations for membership will be considered if they are received by July 2, 2004.

ADDRESSES: Send nominations and written requests for copies of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services Charter to—

Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Medicare Demonstrations Program Group, Mail stop C4–17–27, Attention: Pamela Kelly.

FOR FURTHER INFORMATION CONTACT: *ESRDAdvisoryBoard@cms.hhs.gov* or Pamela Kelly, (410) 786–2461.

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 623(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) requires us to establish a demonstration project of the use of a fully case-mix adjusted payment system for end stage renal disease (ESRD) services under section 1881 of the Social Security Act (42 U.S.C. 1395rr) for patient characteristics. Section 623(f) of the MMA requires the patient characteristics to be identified in a Report to Congress on a bundled prospective payment system for ESRD Services by October 1, 2005. The payment rates will bundle amounts for drugs and biologicals, including erythropoietin, which are separately billed by ESRD facilities, from the date of enactment of MMA, December 8, 2003, and clinical laboratory tests related to these drugs and biologicals.

Section 623(e) of MMA also requires us to establish an Advisory Board to provide advice and recommendations with respect to the establishment and operation of this demonstration project.

II. Charter, General Responsibilities, and Composition of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services

A. Charter Information and General Responsibilities

On May 11, 2004, the Secretary signed the charter establishing the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services. The MMA provides that the Advisory Board will terminate on December 31, 2008. The Advisory Board, as chartered under the legal authority of section 623(e) of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463).

You may obtain a copy of the Secretary's charter for the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services from *http://www.cms.hhs.gov/faca/stcomm.asp* on the day this notice is published or by mailing a written request to the address specified in the **ADDRESSES** section of this notice.

As specified in the charter, before implementation of the demonstration, the Advisory Board will study and make recommendations on the following issues:

- The drugs, biologicals, and clinical laboratory tests to be bundled into the demonstration payment rates.
- The method and approach to be used for the patient characteristics to be included in the fully case-mix adjusted demonstration payment system.
- The manner in which payment for bundled services provided by non-demonstration providers should be handled for beneficiaries participating in the demonstration.
- The feasibility of providing financial incentives and penalties to plans operating under the demonstration that meet or fail to meet applicable quality standards.
- The specific quality standards to be used.
- The feasibility of using disease management techniques to improve quality and patient satisfaction and reduce costs of care for the beneficiaries participating in the demonstration.
- The selection criteria for demonstration organizations.

Upon implementation of the demonstration, the Advisory Board will continue to advise the Secretary and the Administrator on the operation of the demonstration.

B. Composition of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services

Section 623(e) of MMA specifies the composition of the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services. It states that the Advisory Board will be composed of representatives of the following:

- Patient organizations.
- Individuals with expertise in ESRD dialysis services, such as clinicians, economists, and researchers.
- The Medicare Payment Advisory Commission, established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6).
- The National Institutes of Health.
- Network Organizations under section 1881(c) of the Social Security Act (42 U.S.C. 1395rr(c)).
- Medicare contractors to monitor quality of care.
- Providers of services and renal dialysis facilities furnishing ESRD services.
- The charter specifies there will be 11 members on the Advisory Board.

III. Submission of Nominations

We are requesting nominations for membership on the Advisory Board on the Demonstration of a Bundled Case-Mix Adjusted Payment System for ESRD Services. We will consider qualified individuals who are self-nominated or are nominated by organizations representing patients and providers when we select these representatives. The Secretary will appoint members to serve on the Advisory Board from among those candidates that we determine have the technical expertise to meet specific agency needs in a manner to ensure an appropriate balance of membership.

Any interested person may nominate one or more qualified individuals for each of the categories listed in section II.B. of this notice. Each nomination must include the following information:

1. A letter of nomination that contains contact information for both the nominator and nominee (if not the same).
2. A statement from the nominee that he or she is willing to serve on the Advisory Board for its duration (that is, through December 31, 2008) and an explanation of the nominee's interest in serving on the Advisory Board. The nominee should also indicate whether he or she would be willing to serve as the chair of the Advisory Board. (For self-nominations, this information may be included in the nomination letter.)
3. A curriculum vitae that indicates the nominee's educational and ESRD-related experiences.
4. Two letters of reference that support the nominee's qualifications for participation on the Advisory Board. (For nominations other than self-nominations, a nomination letter that includes information supporting the nominee's qualifications may be counted as one of the letters of reference.)

To ensure that a nomination is considered, we must receive all of the nomination information specified in section III of this notice by July 2, 2004. Nominations should be mailed to the address specified in the **ADDRESSES** section of this notice.

Authority: Section 623(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). (Catalog of Federal Domestic Assistance Program No. No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 26, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–12421 Filed 5–28–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1279–N]

Medicare Program; Request for Nominations for the Program Advisory Oversight Committee for the Competitive Acquisition of Durable Medical Equipment and Other Items

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice solicits nominations for individuals to serve on the Program Advisory Oversight Committee that will advise the Secretary of Health and Human Services on the establishment of the competitive acquisition of durable medical equipment and certain other items and services under the Medicare program. This notice implements section 302(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003. The Secretary will establish the committee. In addition, this committee is exempt from the Federal Advisory Committee Act, 5 U.S.C., appendix 2.

DATES: Nominations will be considered if we receive all of the required information no later than 5 p.m., July 2, 2004.

ADDRESSES: Send nominations to—Division of Community Post Acute Care, Mail stop C5–08–17, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attention: Sean Dalenberg or Michael Keane. Nominations may also be e-mailed to *sdalenberg@cms.hhs.gov* or *mkeane@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Sean Dalenberg at (410) 786–0300 or Michael Keane at (410) 786–4495. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Payment for durable medical equipment (DME) is currently based on fee schedule amounts established using reasonable charge data from earlier years. Section 302(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), requires the Secretary of the Department of Health and Human Services to replace the current DME payment methodology for certain items with a competitive acquisition process to improve the effectiveness of Medicare's methodology for setting DME payment amounts. This new bidding process will establish payment for certain durable medical equipment, enteral nutrition, and off-the-shelf orthotics. In addition, the statute requires the Secretary to establish and administer a Program Advisory and Oversight Committee (PAOC) that will provide advice on the development and implementation of the Competitive Acquisition Program.

II. Goals, General Responsibilities, and Composition of the Program Advisory Oversight Committee

A. Goals and General Responsibilities

Section 302 of the MMA, also states that the goals of the committee are to provide advice on the following:

- The implementation of the Competitive Acquisition Program.
- The establishment of financial standards that take into account the needs of small providers.
- The establishment of requirements for collection of data for the efficient management of the program.
- The development of proposals for efficient interaction among manufacturers, providers of services, suppliers, and individuals.
- The establishment of quality standards.

In addition, the MMA states that the committee may also perform additional functions to assist the Secretary.

In accordance with section 302 of the MMA, the Committee will be intact until December 31, 2009. Committee meetings are expected to occur every 2 months during the first year and quarterly thereafter. Committee meetings will be held in the Baltimore/Washington DC area. (We will reimburse travel expenses, which will be based on government per diem rates and travel policy.)

B. Composition of the Program Oversight Committee (PAOC)

We have particular interest in individuals with expertise in DME, prosthetics, orthotics, or supplies (DMEPOS) and competitive bidding, as well as experience in furnishing services and items in the rural and the urban marketplace. The PAOC will be composed of 12 to 15 members from the following broad representation:

- Beneficiary/consumer representatives.
- Physicians and other practitioners.
- Manufacturers.
- Suppliers.
- Professional standards organizations.
- Financial standards specialists.
- Data management specialists.
- Association representatives.
- Experts in shipping fragile medical materials.
- Other. (If you believe that representatives of other specialties or with other skills should be included on the committee, you may indicate the category or respective categories and you may nominate an individual for that category.)

III. Submission of Nominations

This notice is requesting nominations for membership on the PAOC. The Secretary will consider qualified individuals who are nominated and determined to have the expertise required to meet specific agency needs and who will ensure an appropriate balance of membership.

Nominations may be made for one or more qualified individuals and self-nominations will also be accepted. Each nomination must include the following:

1. A letter of nomination that includes the following—

a. Contact information for both the nominator and nominee (if not the same).

b. The category, as specified in section II.B. of this notice for which the nomination is being made (for example, suppliers or association representatives).

2. A curriculum vitae or resume of the nominee that includes a statement of the nominee's current professional responsibilities (not to exceed five pages).

3. A statement that the nominee is willing to serve on the committee for its duration (that is, until December 31, 2009). This statement should also include a discussion of the nominee's relevant experience (not to exceed three pages). (For self-nominations, this information may be included in the nomination letter.)

Authority: Section 302(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 27, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–12434 Filed 5–28–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pulmonary-Allergy Drugs Advisory Committee. This meeting was announced in the **Federal Register** of May 11, 2004 (69 FR 26169). The amendment is being made to reflect a change in the location portion of the meeting, a clarification in the agenda portion of the meeting, and a change in the procedure portion regarding the time for the open public hearing session. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, or e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 11, 2004, FDA announced that a meeting of the Pulmonary-Allergy Drugs Advisory Committee will be held on June 10, 2004. On page 26170, in the first column, the location, agenda, and procedure portions of the meeting are amended to read as follows:

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Agenda: The committee will discuss whether the use of chlorofluorocarbons (CFCs) as propellants in albuterol metered-dose inhalers (MDIs) is no longer an essential use under the criteria as set forth in the Code of Federal Regulations (21 CFR § 2.125(g)).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 24, 2004. Oral presentations from the public will be scheduled between approximately 12:30 p.m. to 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by May 24, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

This notice is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 25, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–12365 Filed 5–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov and http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories 8901 W. Lincoln Ave.
West Allis, WI 53227
414–328–7840 / 800–877–7016
(Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
585–429–2264

Advanced Toxicology Network
3560 Air Center Cove, Suite 101
Memphis, TN 38118
901–794–5770 / 888–290–1150

Aegis Analytical Laboratories, Inc.
345 Hill Ave.
Nashville, TN 37210
615–255–2400

Baptist Medical Center-Toxicology Laboratory
9601 I–630, Exit 7
Little Rock, AR 72205–7299
501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab
8433 Quivira Rd.
Lenexa, KS 66215–2802
800–445–6917

Diagnostic Services Inc., dba DSI
12700 Westlinks Dr.
Fort Myers, FL 33913
239–561–8200 / 800–735–5416

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC
1229 Madison St., Suite 500, Nordstrom Medical Tower

Seattle, WA 98104
206–386–2661 / 800–898–0180
(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc.
P.O. Box 2969, 1119 Mearns Rd.
Warminster, PA 18974
215–674–9310

Dynacare Kasper Medical Laboratories*
10150–102 St., Suite 200
Edmonton, Alberta
Canada T5J 5E2
780–451–3702 / 800–661–9876

ElSohly Laboratories, Inc.
5 Industrial Park Dr.
Oxford, MS 38655
662–236–2609

Express Analytical Labs
3405 7th Ave., Suite 106
Marion, IA 52302
319–377–0500

Gamma-Dynacare Medical Laboratories *
A Division of the Gamma-Dynacare Laboratory Partnership 245 Pall Mall St.
London, ONT
Canada N6A 1P4
519–679–1630

General Medical Laboratories
36 South Brooks St.
Madison, WI 53715
608–267–6225

Kroll Laboratory Specialists, Inc.
1111 Newton St.
Gretna, LA 70053
504–361–8989 / 800–433–3823
(Formerly: Laboratory Specialists, Inc.)

LabOne, Inc.
10101 Renner Blvd.
Lenexa, KS 66219
913–888–3927 / 800–873–8845
(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings
7207 N. Gessner Rd.
Houston, TX 77040
713–856–8288 / 800–800–2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908–526–2400 / 800–437–4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Dr.
Research Triangle Park, NC 27709
919–572–6900 / 800–833–3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
10788 Roselle St.
San Diego, CA 92121
800–882–7272
(Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings
1120 Stateline Rd. West
Southaven, MS 38671
866–827–8042 / 800–233–6339
(Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories
Forensic Toxicology Laboratory
1000 North Oak Ave.
Marshfield, WI 54449
715–389–3734 / 800–331–3734

MAXXAM Analytics Inc. *
5540 McAdam Rd.
Mississauga, ON
Canada L4Z 1P1
905–890–2555
(Formerly: NOVAMANN (Ontario) Inc.)

MedTox Laboratories, Inc.
402 W. County Rd. D
St. Paul, MN 55112
651–636–7466 / 800–832–3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503–413–5295 / 800–950–5295

Minneapolis Veterans Affairs Medical Center
Forensic Toxicology Laboratory
1 Veterans Dr.
Minneapolis, MN 55417
612–725–2088

National Toxicology Laboratories, Inc.
1100 California Ave.
Bakersfield, CA 93304
661–322–4250 / 800–350–3515

Northwest Drug Testing, a division of NWT Inc.
1141 E. 3900 S.
Salt Lake City, UT 84124
801–293–2300 / 800–322–3361
(Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc.
1213 Genoa-Red Bluff
Pasadena, TX 77504
888–747–3774
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories
P.O. Box 972, 722 East 11th Ave.
Eugene, OR 97440–0972
541–687–2134

Pacific Toxicology Laboratories
9348 DeSoto Ave.
Chatsworth, CA 91311
800–328–6942
(Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories
110 West Cliff Dr.
Spokane, WA 99204
509–755–8991 / 800–541–7891x8991

PharmChem Laboratories, Inc.
4600 N. Beach
Haltom City, TX 76137
817–605–5300
(Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory
7800 West 110th St.
Overland Park, KS 66210
913–339–0372 / 800–821–3627

Quest Diagnostics Incorporated
3175 Presidential Dr.
Atlanta, GA 30340
770–452–1590/800–729–6432
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
4770 Regent Blvd.
Irving, TX 75063
800–824–6152
(Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
4230 South Burnham Ave., Suite 250
Las Vegas, NV 89119–5412
702–733–7866/800–433–2750
(Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated
400 Egypt Rd.
Norristown, PA 19403
610–631–4600/877–642–2216
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
506 E. State Pkwy.
Schaumburg, IL 60173
800–669–6995/847–885–2010
(Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated
7600 Tyrone Ave.
Van Nuys, CA 91405
818–989–2520/800–877–2520
(Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc.
450 Southlake Blvd.
Richmond, VA 23236
804–378–9130

Sciteck Clinical Laboratories, Inc.
317 Rutledge Rd.
Fletcher, NC 28732
828–650–0409

S.E.D. Medical Laboratories
5601 Office Blvd.
Albuquerque, NM 87109

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspection of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

505–727–6300/800–999–5227

South Bend Medical Foundation, Inc.
530 N. Lafayette Blvd.
South Bend, IN 46601
574–234–4176 x276

Southwest Laboratories
2727 W. Baseline Rd.
Tempe, AZ 85283
602–438–8507/800–279–0027

Sparrow Health System
Toxicology Testing Center, St. Lawrence Campus
1210 W. Saginaw
Lansing, MI 48915
517–377–0520
(Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory
1000 N. Lee St.
Oklahoma City, OK 73101
405–272–7052

Toxicology & Drug Monitoring Laboratory
University of Missouri Hospital & Clinics
301 Business Loop 70 West, Suite 208
Columbia, MO 65203
573–882–1273

Toxicology Testing Service, Inc.
5426 N.W. 79th Ave.
Miami, FL 33166
305–593–2260

U.S. Army Forensic Toxicology Drug Testing Laboratory
2490 Wilson St.
Fort George G. Meade, MD 20755–5235
301–677–7085

Patricia Bransford,

Director, Division of Management Systems, SAMHSA.

[FR Doc. 04–12237 Filed 6–1–04; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Homeland Security Advisory Council

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will hold its next meeting in Washington, DC on Thursday, June 17, 2004. The HSAC will meet for purposes of: (1) Welcoming and swearing in new members; (2) deliberation on recommendations of the Task Force on State and Local Funding; (3) receiving reports from Senior Advisory Committees; (4) receiving briefings from DHS staff on Departmental initiatives; and (5) holding roundtable discussions with and among HSAC members.

This meeting will be partially closed; the open portions of the meeting for purposes of (1) through (3) above will be held at the U.S. Secret Service Headquarters, 950 H Street, NW., Washington, DC from 10 a.m. to 12 p.m. The closed portions of the meeting, for purposes of (4) and (5) above will be held at the U.S. Secret Service Headquarters from 9 a.m. to 9:50 a.m. and from 12:10 p.m. to 3 p.m.

Public Attendance: A limited number of members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the public session provide his or her name, social security number, and date of birth no later than 5 p.m. EST, Friday, June 11, 2004. Please provide the required information to Mike Miron or Jeff Gaynor of the HSAC staff, via e-mail at *HSAC@dhs.gov,* or via phone at (202) 692–4283. Persons with disabilities who require special assistance should indicate so in their admittance request. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 9:45 a.m.

Basis for Closure: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), the Secretary has issued a determination that portions of this HSAC meeting will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7) and (c)(9)(B) and that, accordingly, these portions of the meeting will be closed to the public.

Public Comments: Members of the public who wish to file a written statement with the HSAC may do so by mail to Mike Miron at the following address: Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528. Comments may also be sent via e-mail to *HSAC@dhs.gov* or via fax at (202) 772–9718.

Dated: May 28, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–12610 Filed 6–1–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee; Notice of Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee. The NSLRSDA was established by Congress in the Land Remote Sensing Policy Act of 1992, Public Law 102–555, 15 U.S.C. 5601.

The purpose of the Committee is to advise the U.S. Geological Survey (USGS), Earth Resources Observation Systems (EROS) Data Center (EDC), on guidelines or rules relating to the NSLRSDA archival data deposit, maintenance, and preservation as well as access management policies and procedures. The Committee will be responsible for providing advice and consultation on a broad range of technical and policy topics in guiding development of NSLRSDA.

In order for the Secretary to be advised by a broad spectrum of remote sensing data users and producers, committee membership will be composed of 15 members, as follows: Two from academia, with one laboratory researcher-data user and one classroom educator-data user; four from government, with two Federal data users and two State/local data users; four from industry, with two licensed data providers, one value-added industruy provider, and one commercial industry provider; and five others, with one non-USA representative and four non-affiliated Individuals at-large from any sector. Expertise in information science, natural science, social science, and policy/law are represented within the sectors listed above.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

Further information regarding the NSLRSDA Advisory Committee may be obtained from the Director, USGS, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. Certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the National Satellite Land Remote Sensing Data Archive Advisory Committee is necessary and in the public interest in connection with the performance of duties by the Department of the Interior mandated pursuant to the Land Remote Sensing Policy Act of 1992, Public Law 102–555, 15 U.S.C. 5601.

Dated: May 19, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–12363 Filed 5–28–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Recovery Plan for the Ouachita Rock Pocketbook

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final recovery plan for the endangered Ouachita rock pocketbook (*Arkansia wheeleri*). This rare freshwater mussel inhabits portions of certain streams in and near the southern slope of the Ouachita Uplift. A viable population of fewer than 1,800 individuals inhabits the Kiamichi River in Oklahoma and a smaller population (fewer than 100 individuals) inhabits the lower Little River in Oklahoma and Arkansas. Limited evidence exists for recent occurrence of the species in the Ouachita River in Arkansas (where it occurred historically) and in two Red River tributaries in Texas. Populations outside of the Kiamichi River are believed to be too reduced at present to ensure long-term viability. All of the populations have experienced reductions and degradation of their inhabited stream segments and are separated by major impoundments. The final plan outlines objectives, criteria, and tasks for recovering this endangered species.

ADDRESSES: A copy of the final recovery plan may be requested by contacting the Oklahoma Ecological Services Field Office, 222 South Houston Avenue, Suite A, Tulsa, Oklahoma 74127.

FOR FURTHER INFORMATION CONTACT: David Martinez, U.S. Fish and Wildlife Service, at the above address, or by telephone, 918/581–7458 ext. 228.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to points where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. The Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels to upgrade or delist the species, and estimate time and cost for implementing the identified recovery measures.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Ouachita rock pocketbook was listed as endangered in 1991 (56 FR 54950) and a draft recovery plan was prepared and issued for the species in 1994.

Issuance of the draft plan included a notice of availability and opportunity for public comment (59 FR 35948) and other public notification efforts. Pertinent information received by the Service during the public comment period has been considered in preparation of the final recovery plan, and is summarized in the plan's appendix. This information will also be taken into account in the course of implementing recovery actions. Additional information on population status and distribution has been collected and updated since publication of the draft in 1994; however, no substantive changes have been made to the overall recovery strategy for the species in the final recovery plan.

The Ouachita rock pocketbook (*Arkansia wheeleri*) represents a monotypic genus now believed to be restricted to approximately 431 kilometers (268 miles) of stream segments in the Red River and Ouachita River drainages in southeastern Oklahoma, southwestern Arkansas, and northwestern Texas. Stream impoundment, potential water withdrawals, channelization, water quality degradation, and potential land use changes are major threats to the species' continued survival.

The final recovery plan includes updated scientific information about the Ouachita rock pocketbook and identifies research and management actions needed to conserve and recover the species' populations and habitat. The strategy for recovery is based on protection of the Kiamichi River population along with re-establishing and protecting viable populations in other portions of the species' historical range. Activities believed necessary to accomplish recovery include increased protection of populations and their habitats, restoration of degraded habitats, filling of critical information gaps regarding the species' biology and propagation, and public outreach efforts. The plan includes downlisting and interim delisting recovery criteria.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 6, 2004.

Bryan Arroyo,

Acting Regional Director.

[FR Doc. 04–12394 Filed 6–1–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES: The TWG will conduct the following public meeting:

Phoenix, Arizona—June 30–July 1, 2004. The meeting will begin at 8 a.m. and conclude at 5 p.m. on the first day, and will begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Scottsdale Plaza Resort (La Valencia Conference Room), 7200 N. Scottsdale Road, Scottsdale, Arizona.

Agenda: The purpose of the meeting will be to continue working on development of the core monitoring plan and the long-term experimental plan, review the TWG Operating Procedures, receive an update on the AMWG Retreat, hear results of scientific investigations, and discuss environmental compliance and other

administrative and resource issues pertaining to the AMP.

To allow full consideration of information by the TWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at dkubly@uc.usbr.gov (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: May 19, 2004.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 04–12395 Filed 6–1–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Application to Make and Register a Firearm.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 36, on page 8482 on February 24, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used,

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Make and Register a Firearm.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 1 (5320.1). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit, State, Local, or Tribal Government.

Abstract: The form is used by persons applying to make and register a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,071 respondents, who will complete the form within approximately 4 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 4,284 total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 26, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 04–12402 Filed 6–1–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,080]

Accenture LLP, Oaks, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 15, 2004, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Accenture LLP, Oaks, Pennsylvania, was signed on February 13, 2004, and published in the **Federal Register** on March 12, 2004 (69 FR 11888).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Accenture LLP, Oaks, Pennsylvania engaged in maintenance and development of software code. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of

work performed at the subject facility as a service. The petitioner further compares software programs developed under the auspices of Accenture to Microsoft software packages and computer games which are packaged and sold as ''products''. Consequently, the petitioner concludes that software developed by the subject group of workers should be considered a product as well.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that workers at the subject firm are engaged in application development and maintenance services of a trust accounting software to a customer, which in its turn provides investment processing services for financial institutions. Accenture workers perform application fault fixes, enhancements and modifications. The official further clarified that software developed by the subject group of workers is not recorded on media devices for further distribution. All Accenture activities are performed on the application code residing on customer's mainframe and transferred electronically.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222 of the Trade Act of 1974.

Software development and maintenance are not considered production of an article within the meaning of section 222 of the Trade Act. Petitioning workers do not produce an ''article'' within the meaning of the Trade Act of 1974. Formatted electronic databases and codes are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. Although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of products that customs officials inspect and that the TAA program was generally designed to address. The Department does acknowledge software as a product in cases when the software is recorded and marketed on a physical media device, in which case the process of recording (burning) is considered a production and the physical media device a product.

The petitioner also alleges that imports caused layoffs at the subject firm, asserting that because workers lost their jobs due to a transfer of job functions abroad, petitioning workers should be considered import impacted.

The company official stated that Accenture LLP did transfer a number of junior level Programmer-Analyst positions to Philippines during the relevant time period. However, none of these positions involve any sort of production. The Philippine team of analysts is performing programming activities by remotely accessing mainframe system, which is located in Oaks, Pennsylvania and making changes directly to the software on that system. Informational material that is electronically transmitted is not considered production within the context of TAA eligibility requirements, so there are no imports of products in this instance. Further, as the edited material does not become a product until it is recorded on media device, there was no shift in production of an ''article'' within the meaning of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12383 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,002]

Asti, Inc., Transaction Printer Group, Inc., Riverton, Wyoming; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 21, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on February 25, 2004 and published in the **Federal Register** on April 6, 2004 (69 FR 18109).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Asti, Inc., Transaction Printer Group, Inc., Riverton, Wyoming engaged in the production of impact printers, was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of impact printers in 2002 and 2003. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of impact printers during the relevant period, nor did it shift production to a foreign source.

The petitioner alleges that the layoffs at the subject firm are attributed to a shift in production from Riverton plant and from another manufacturing facility in Ithaca, New York to Mexico in 1999. To support this statement, the petitioner attached a letter signed by the General Manager of Axiohm dated July 28, 1999 which announces a shift of manufacturing operations from the

Riverton plant to be completed by December 1999.

A company official was contacted to clarify whether a shift in production occurred within the subject firm during 2003 and 2004. The official confirmed directly that there was no shift in production from the subject firm to the Mexican facility in the relevant time period. A shift to Mexico mentioned by the petitioner took place in 1999, which is outside of the relevant time period.

The official further stated that though the subject firm does own a facility in Mexico, products manufactured there are not like or directly competitive with those manufactured at the Riverton plant.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12385 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,210]

Connector Service Corporation, Overland Bolling Company, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 21, 2003, applicable to workers of Connector Service Corporation, Dallas, Texas. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74979).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of electronic connectors.

New information shows that Connector Service Corporation purchased Overland Bolling Company in 2003. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Overland Bolling Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Connector Service Corporation who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–53,210 is hereby issued as follows:

All workers of Connector Service Corporation, Overland Bolling Company, Dallas, Texas, who became totally or partially separated from employment on or after October 9, 2002, through November 21, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12387 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,061; TA–W–54,061I]

Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, ME, Including Employees of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant Operating at Various Locations in the State of New York: Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 30, 2004, applicable to workers of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, Maine. The notice was published in the **Federal Register** on February 6, 2004 (69 FR 5868).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Lincoln, Maine location of the subject firm operating at various locations in the state of New York. These employees provide administrative, sales and marketing support function services for the production of paper, tissue paper and wood pulp produced at the Lincoln, Maine location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the of the Lincoln, Maine location of Eastern Pulp and Paper Co., Inc. operating at various locations in the state of New York.

The intent of the Department's certification is to include all workers of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,061 is hereby issued as follows:

All workers of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, Maine (TA–W–54,061), including employees of Eastern Pulp and Paper Co., Inc., Lincoln Pulp and Paper Plant, Lincoln, Maine operating at various locations in the state of New York (TA–W–54,0616I), who became totally or partially separated from employment on or after January 16, 2003, through January 30, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of April, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12384 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,515]

Eastman Kodak Company, Customer Service Call Center, Rochester, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 16, 2004, in response to a petition filed by the company on behalf of workers at Eastman Kodak Company, Customer Service Call Center, Rochester, New York.

The petitioner has requested that the petition be withdrawn. Consequently,

further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12380 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,664]

Owens-Illinois, Inc., Hayward, CA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 8, 2004, Glass, Molders, Pottery, Plastics & Allied Workers International Union and Local Union 167 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on January 29, 2004. The Notice was published in the **Federal Register** on March 12, 2004 (69 FR 11888).

The Department reviewed the request for reconsideration and has determined that the petitioners have provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12386 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,735]

Phillips Plastics Corporation, Multi Shot Facility, Eau Claire, WI; Notice of Negative Determination on Reconsideration

On March 5, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department published the Notice in the **Federal Register** on March 16, 2004 (69 FR 12351).

The initial Trade Adjustment Assistance petition, dated December 4, 2003, was filed on behalf of workers at Phillips Plastics Corporation, Eau Claire, Wisconsin. The petition was denied based on no sales decline, no company imports and no shift of production during the relevant time period.

In a letter dated February 6, 2004, the petitioner requested administrative reconsideration of the Department's negative determination. The petitioner alleged that production declined during October-December 2003, that sales may decline in 2004 from previous levels, and that 2003 sales declined from 2002 levels.

The relevant time period of the investigation is one year prior to the date of the petition through the date of the decision. Therefore, events which occur outside the relevant time period cannot be considered.

The Department conducted an investigation to determine whether subject company production of molded parts declined during the relevant time period. The investigation revealed that while production decline during October-December 2003 as alleged, the decline occurred in only one month and increased in the other two months as compared to the corresponding time period in 2002. The investigation also revealed that while production fluctuated during 2003, overall production for 2003 was greater then overall production for 2002.

Petitioner's allegation of sales declines in 2004 was not investigated because it falls outside the relevant time period and therefore cannot be considered.

The Department also investigated whether subject facility sales declined in 2003 from 2002 levels. The investigation revealed that sales increased in 2003 from 2002 levels.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Phillips Plastics Corporation, Eau Claire, Wisconsin.

Signed at Washington, DC, this 5th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12381 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,691]

R.A.G.S., Inc., Including Leased Workers of Selective HR Solutions, Inc., Albemarle, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 30, 2004, applicable to workers of R.A.G.S., Inc., Albemarle, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of women's tops: jackets, blouses and shirts.

Information provided by the State agency shows that all workers of the Albemarle, North Carolina location of the subject firm are leased workers of Selective HR Solutions, Inc.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Selective HR Solutions, Inc. employed at R.A.G.S., Inc., Albemarle, North Carolina.

Based on these findings, the Department is amending this certification to include leased workers of Selective HR Solutions, Inc. working at R.A.G.S., Inc., Albemarle, North Carolina.

The intent of the Department's certification is to include all workers of

R.A.G.S., Inc. who was adversely affected by increased imports.

The amended notice applicable to TA–W–54,691 is hereby issued as follows:

All workers of R.A.G.S., Inc., including leased workers of Selective HR Solutions, Inc., Albemarle, North Carolina, who became totally or partially separated from employment on or after March 31, 2003, through April 30, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12382 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,786]

Royce Hosiery, LLC, Martinsburg, WV; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 27, 2004, in response to a worker petition which was filed on behalf of workers at Royce Hosiery, LLC, Martinsburg, West Virginia (TA–W–54,786).

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 7th day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12379 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of April and May 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a) (2) (A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a) (2) (B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–54,506; Sanford Pattern Works, Inc., Taylor, MI;

TA–W–53,521; Wil-Mort Metals, Inc., Fort Payne, AL;

TA–W–54,638 & A; Spartech Polycom, Inc., Danora Plant 1, Compounding Div., a subsidiary of Spartech Corp., Danora, PA and Danora Plant 2, Danora, PA;

TA–W–54,675; Royal Vendors, Inc., Kearneysville, WV;

TA–W–54,604; Penn Ventilation, Air System Components, LP, Junction, KY;

TA–W–54,755; Textile Sales & Repair, Inc., Gastonia, NC;

TA–W–54,436; Thomson Broadcast and Media Solutions, Inc., AKA Thomson Grass Valley, a subsidiary of Thompson, Inc., Customer Service Organization, Nevada City, CA;

TA–W–54,779; Morgan Adhesives Co., a subsidiary of Bemis Company, Inc., North Las Vegas, NE;

TA–W–54,559; Cequent Trailer Products, formerly Hammerblow Corp., Wausau, WI;

TA–W–54,484; Cady Industries, Inc, Pearson, GA;
TA–W–54,275; Smith Meter, Inc., (Also known as FMC Measurement Solutions), a subsidiary of FMC Technologies, Inc., Erie, PA;
TA–W–54,432; American Hofmann Corp., a subsidiary of Hofmann Mondial, Inc., Lynchburg, VA;
TA–W–54,239; Heartland Rig International LLC, Brady, TX;
TA–W–54,618; Dayton Technologies, Wilmington, DE;
TA–W–54,239; Heartland Rig International, LLC, Brady, TX;
TA–W–54,713; Indiana Die Molding LLC, Fort Wayne, IN;
TA–W–54,487; Maple Mountain Industries, Inc., Meyersdale, PA;
TA–W–54,524; Straitoplane, Inc., Grand Rapids, MI;
TA–W–54,624; Belarus Tractor International, Milwaukee, WI;
TA–W–54,525; ADM Milling Co., including leased workers of Cornwell Staffing Services, D.C. Staffing Services and Crown Services, Inc., Milwaukee, WI;
TA–W–54,574; Morgan Construction Co., Worcester, MA;
TA–W–54,733; Bridges Hosiery Mill, Hildebran, NC;
TA–W–54,705; Ozark Iron Works, LLC, (formerly known as Calico Rock Iron Works, Inc.), a div. of Sommer Metalcraft, Calico Rock, AR;
TA–W–54,763; Peterson Spring Co., a subsidiary of Peterson American Corp., Greenville, IL;
TA–W–54,681; 5 B's, Inc., Cut and Dew Div., Barnesville, OH;
TA–W–54,455; Weirton Steel Corp., Weirton, WV;
TA–W–54,045D; United States Steel Corp., Gary Works, Sheet Products Div., Gary, IN;
TA–W–54,045F; United States Steel Corp., Gary Works, Plate Products Div., Gary, IN.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–54,572; GE Consumer Finance Americas, a subsidiary of GE Capital Corp., Canton, OH;
TA–W–54,684; Keane, Inc., Montpelier, VT;
TA–W–54,801; Three Rivers Warehouse, Muskogee, OK;
TA–W–54,653; Affina, Information Technology Department, Peoria, IL;
TA–W–54,650; Wright Express LLC, a subsidiary of The Cendant Corp., Technical Services Div., Quality Assurance Department, South Portland, ME;
TA–W–54,875; Thomson, Inc., American Tube Operations, Dunmore, PA;
TA–W–54,770 & A; Motorola, Inc., PCS GSM Group, Boynton Beach, FL and 3G Group, Boynton Beach, FL;
TA–W–54,406; Peagasus Solutions, Inc., Unirez Facility, Grapevine, TX;
TA–W–54,501; AT&T Aireless Services, Bothell 10 Facility, a div. of AT&T Wireless, Bothell, WA;
TA–W–54,628; Straightline Source, Inc., a div. of United States Steel Corp., Pittsburgh, PA;
TA–W–54,550; Union Switch & Signal, Inc., Pittsburgh, PA;
TA–W–54,593; Meridian Health Care Management, Woodland Hills, CA;
TA–W–54,598; Computer Sciences Corp., Technology Management Group, Nortel Networks Account, Research Triangle Park, NC;
TA–W–54,594; XO California, Inc., a wholly owned subsidiary of XO Communications, Inc., Santa Ana, CA;
TA–W–54,641; Flynt Fabrics, Inc., Burlington, NC;
TA–W–54,648; A.I.G. American General Finance, a subsidiary of American International Group, Dallas, TX;
TA–W–54,660; Rotary International, World Headquarters, IT Department, Evanston, IL;
TA–W–54,542; The Swatch Group (US), Inc., including leased workers of Spherion, Lancaster, PA;
TA–W–54,402; Alcatel, Allen, TX;
TA–W–54,468; Trans Union LLC, Crum Lynne, PA;
TA–W–54,471; Circuit City, Martinsville, VA;
TA–W–54,365; Greenpoint Bank, Lake Success, NY;
TA–W–54,692; The Bank of New York, NY, NY;
TA–W–54,702; Travelocity, Clintwood, VA;
TA–W–54,704; West Telemarketing Corp. Outbound, Smith, AR;
TA–W–54,771; The Penn Traffic Co., Syracuse, NY;
TA–W–54,717; Harris Interactive, Inc., Data Collection Services, Rochester, NY;
TA–W–54,546; United Services Automobile Association Property and Casualty Insurance, Western Regional Office, a div. of The United Services Automobile Association, Sacramento, CA;
TA–W–54,570; Imperial Home Décor Group Holdings, Inc., Knoxville, TN;
TA–W–54,587; Ness U.S.A., Inc., Hackensack, NJ;
TA–W–54,621; Western, a div. of W.P. Industries, Norwalk, CA;
TA–W–54,622; Henderson Sewing Machine Co., Andalusia, AL;
TA–W–54,623; Piedmont Sewing Machine and Supply Corp., Pittsburgh, PA;
TA–W–54,330; Allied Holdings, Inc., Decatur, GA;
TA–W–54,536; Acorn Products Co., Inc., Bridgton, ME;
TA–W–54,626; Distribution Dynamics, Inc., Portland, OR;
TA–W–54,502; Goodrich Corp., Englewood, NJ;
TA–W–54,600; Measurement Specialties, Inc., Consumer Products Div., Fairfield, NJ;
TA–W–54,649; Cigna Healthcare, IT Software Development and Support Div., Hooksett Facility, a div. of The Cigna Corp., Hooksett, NH;
TA–W–54,375; International Paper Co., Atlantic Region Forest Resources Div., Georgetown, SC;
TA–W–54,431; Dexter Shoe Co., Dexter Maine Plant, Dexter, ME;
TA–W–54,794; Imperial Home Décor, Beachwood, OH;
TA–W–54,343; Kenneth Cole Services, Inc., a div. of Kenneth Cole Productions, Inc., Secaucus, NJ;
TA–W–54,395; Great Lakes Gas Transmission Co., Troy, MI;
TA–W–54,421; Sykes Enterprises, Inc., Ada, OK;
TA–W–54,785; AVX Corp., Advance Planning Administration, Myrtle Beach, SC;
TA–W–54,802; New Roads, Inc., Martinsville, VA;
TA–W–54,762; IntelliRisk Management, Inc., Cedar Falls, IA.

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–54,451; Meadowcraft, Inc., Birmingham, AL;
TA–W–54,674; Major League, Inc., Mount Airy, NC;
TA–W–54,683; USAKNIT, Inc., Fort Payne, AL;
TA–W–54,678; C and L Custom Tooling, LLC, Clackamas, OR;
TA–W–54,526; Elder Manufacturing Co., Inc., Dexter Facility, Dexter, MO.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–54,718; Yazoo Industries, a subsidiary of Hood Cable Co., Yazoo City, MS.

The investigation revealed that criteria (a)(2)(A) (I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a country not under the free trade agreement with U.S.) have not been met.

TA–W–54,739; Robert Bosch Corp., Automotive Chassis Div., St. Joseph, MO;

TA–W–54,453; Agilent Technologies, Inc., Manufacturing Test Business Unit, Loveland, CO;

TA–W–54,112; Allegheny Technologies, Inc., Allvac Div., Monroe, NC.

The investigation revealed that criteria (a)(2)(A) (I.C) (increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–54,633; Philips Consumer Electronics, Business Creation for Projection Television Div., Knoxville, TN.

The investigation revealed that criteria (a)(2)(A)(I.A) (no employment decline) and (a)(2)(A)(I.B) (Sales or production, or both, did not decline have not been met.

TA–W–54,670; Pioneer Americas LLC, Henderson Plant, Henderson, NV;

TA–W–54,646; Advanced Glassfiber Yarns, LLC, (Also known as AGY Huntingdon, LLC), a div. of AGY Holdings, South Hill, VA.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–54,520; Freeport Brick Co., Freeport, PA: February 17, 2003.

TA–W–54,625; SGL Carbon, LLC, Graphite Specialty, St. Marys, PA: May 29, 2004.

TA–W–54,699; Coyuchi, Inc., Piedmont, SC: March 26, 2003.

TA–W–54,540; Cajah Corp., Hudson, NC: March 17, 2003.

TA–W–54,724; All About Lollipops, Inc., a subsidiary of Maredy Candy Co., Boise, ID: April 9, 2003.

TA–W–54,661; Gordon Garment, Div. of AH Schreiber Co., Inc., Bristol, VA: March 23, 2003.

TA–W–54,591; Palco Labs, Santa Cruz, CA: March 16, 2003.

TA–W–54,588; Velcorex, Inc., a div. of Dollus Mieg Co., Inc. (DMC), Orangeburg, SC: March 18, 2003.

TA–W–54,637; Rice Mills, Inc., Belton, SC: March 31, 2003.

TA–W–54,605; Lithonia Lighting, ESG Div., subsidiary of Acuity Brands, Decatur, GA: March 16, 2003.

TA–W–54,478; Great Years Garment, San Francisco, CA: March 2, 2003.

TA–W–54,254; Newstech NY, Inc., Deferiet, NY: February 11, 2003.

TA–W–54,478; Great Years Garment, San Francisco, CA: March 2, 2003.

TA–W–54,575; Timken U.S. Corp., Industrial Div., formerly known as Torrington/Ingersoll Rand, Rutherfordton, NC: March 19, 2003.

TA–W–54,045; United Steel Corp., Gary Works, Coke Products Div., Gary, IN, A; Gary Works, Iron Producing Div., Gary, IN, B; Gary Works, Steel Producing Div., Gary, IN, C; Gary Works, Hot Rolling Div., Gary, IN, E; Gary Works, Gary Tin Div., Gary, IN, G; Gary Works, Operations Services Div., Gary, IN, H; Gary Works, Staff Group, Gary, IN, I; Gary Works, Administrative Div., Gary, IN and J; East Chicago Tin, East Chicago, IN: January 16, 2003.

TA–W–54,408; Morganite, Inc., Commutator Div., Dunn, NC: February 16, 2003.

TA–W–54,410; Eplus Technology, Inc., a subsidiary of Eplus, Inc., Workers at Corning, Inc., Wilmington, NC: March 3, 2003.

TA–W–54,721; Sulzer Process Pumps, Inc., SPPUS Div., Easley, SC: March 18, 2003.

TA–W–54,391; Quad Tool and Design, Inc., Kewaskum, WI: March 1, 2003.

TA–W–54,491; Art Craft Optical Co., Inc., Rochester, NY: February 19, 2003.

TA–W–54,707; Quincy Products, a div. of Valley Industries, Inc., Quincy, MI: April 8, 2003.

TA–W–54,452; A.E. Nathan Co., Inc., a div. of Jaftex Corp., Henderson, NC: March 8, 2003.

TA–W–54,534; Newton Hardwoods, Madison, ME: March 15, 2003.

TA–W–54,389; Slater Lemont Corp., a subsidiary of Slater Steels Corp., Lemont, IL: February 25, 2003.

TA–W–54,580; Plainsman Hosiery, Inc. Fort Payne, AL: March 15, 2003.

TA–W–54,467; RBX Industries, Inc., Bedford, VA: March 5, 2003.

TA–W–54,582; Missbrenner Wet Printing, Inc., Clifton, NJ: March 24, 2003.

TA–W–54,691; R.A.G.S., Inc., Albemarle, NC: March 31, 2003.

TA–W–54,795; Kawai America Manufacturing, Inc., Lincolnton, NC: April 22, 2003.

TA–W–54,552; ISM Fastening Systems, formerly International Staple and Machine Co., a subsidiary of ISM Investments, Inc., Butler, PA: February 19, 2003.

TA–W–54,730; Manpower, Workers at Johnston Industries, Inc., Dewitt Plant, Dewitt, IA: April 15, 2003.

TA–W–54,743; Acme Pad Corp., Baltimore, MD: April 15, 2003.

TA–W–54,799; Northland Extension Drills, Inc., Grove City, MN: April 27, 2003.

TA–W–54,606; Pride Manufacturing, Inc., a div. of Cintas Corp., Portal, GA: March 15, 2003.

TA–W–54,668; Damy Industries, Inc., Athens, TN: October 23, 2003.

TA–W–54,815; Jami Services Corp., including leased workers of Signum, LLC, Bishopville, SC: April 28, 2003.

TA–W–54,840; Ranco North America, LP, a subsidiary of Invensys, including leased workers of Acloche, Plain City, OH: May 3, 2003.

TA–W–54,820; Moosehead Manufacturing Co., Monson, ME: April 7, 2003.

TA–W–54,549; 3M Precision Optics, Cincinnati, OH: March 18, 2003.

TA–W–54,614; Idra Prince, Holland, Michigan: March 27, 2003.

TA–W–54,658; Whiting Manufacturing Co., Inc., Hazel Green, KY: April 1, 2003.

TA–W–54,651; Excel Dowel Wood Products, Inc., New Portland, ME: March 31, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–54,688; Jabil Circuit, Inc., Auburn Hills Facility, Auburn Hills, MI: April 1, 2003.

TA–W–54,254; Newstech NY, Inc., Deferiet, NY: February 11, 2003.

TA–W–54,630; Osborn International, Brush Div., a div. of Jason, Inc., Cleveland, OH: March 22, 2003.

TA–W–54,619; Agilent Technologies, Wireless Test Equipment Div., Liberty Lake, WA: February 6, 2004.

TA–W–53,905; Finotex U.S.A. Corp., Miami, FL: December 16, 2002.

TA–W–54,697; Plastic Molding Technology, Seymour, CT: April 8, 2003.

TA–W–54,607; Century Fasteners Corp., Workers at SCI Technology, Inc., Enclosure Div., Richmond, KY: March 17, 2003.

TA–W–54,677; Penn Champ, Inc., East Butler, PA: March 31, 2003.

TA–W–54,714; Carbo Minerals, LP, Wrightstown, WI: March 31. 2003.

TA–W–54,473; Atofina Chemicals, Inc., Organic Peroxides Div., Piffard, NY: February 27, 2003.

TA–W–54,308; Invensys, Barber Coleman Dyna Products Div., Including Workers from Furst Staffing, Loves Park, IL: February 11, 2003.

TA–W–54,579; Clayton Marcus Co., Inc., Plant #1, a subsidiary of La-Z-Boy, Hickory, NC: March 16, 2003.

TA–W–54,585; Masterwork Electronics, Inc., Fresno Div., Fresno, CA: March 24, 2003.

TA–W–54,596; Mid-South Electronics, Inc., Raleigh, NC: March 1, 2003.
TA–W–54,687; REHAU, Inc., Springfield, VT: April 1, 2003.
TA–W–54,558; TRW Automotive, North American Braking Div., Sterling Heights, MI: March 15, 2003.
TA–W–54,484A; Cady Industries, Inc., Memphis, TN: March 11, 2003.
TA–W–54,465; Paris Accessories, Inc., Walnutport, PA: March 10, 2003.
TA–W–54,616; B & C Hosiery, Inc., Hosiery Greige Mill Div., Henagar, AL: March 19, 2003.
TA–W–54,669; American Meter Co., Erie, PA: April 2, 2003.
TA–W–54,657; Sterling and Adams Bentwood, Inc., Including leased workers of Carolina Personnel and Atwork Temp Services, Thomasville, NC: March 22, 2003.
TA–W–54,564; Hirsh Industries, Des Moines, IA: March 22, 2003.
TA–W–54,710; Veltri Metal Products, Inc., Celina Tennessee Plant, including leased workers of The Holland Group, and Atwork Cumberland Staffing, Celina, TN: April 12, 2003.
TA–W–54,760; SNC Manufacturing Co., Inc., Oshkosh, WI: April 19, 2003.
TA–W–54,639; PL Subsidiary, Inc., Winder, GA: March 29, 2003.
TA–W–54,676; Ottis Elevator Co., Bloomington Plant, a subsidiary of United Technologies Corp., Bloomington, IN: May 9, 2004.
TA–W–54,711; Stocker Yale, Inc., Salem, NH: April 12, 2003.
TA–W–54,727; Tyco Healthcare Kendall, including leased workers of Keena Staffing Co. and Park Personnel, Argyle, NY: April 14, 2003.
TA–W–54,381, & A; YKK (USA), Inc., Okmulgee Div., a subsidiary of YKK America, Macon, GA and Chesney Div., a subsidiary of YKK America, Macon, GA: March 1, 2003.
TA–W–54,627; CFM Home Products, a div. of CFM U.S. Corp., Ardmore, TN: March 11, 2003.
TA–W–54,644; Celestica, Inc., including leased workers of Adecco Employment Services, Chippewa Falls, WI: March 31, 2003.
TA–W–54,565; Peavey Electronics Corp., Foley Div., Foley, AL: March 15, 2003.
TA–W–54,76 & A; Takata Petri, Inc., Steering Wheel Div., a subsidiary of TK Holdings, Inc., Port Huron, MI and Steering Wheel Frame Div., a subsidiary of TK Holdings, Inc., Port Huron, MI: April 22, 2003.
TA–W–54,477; Simonds International, Kirkland Washington Div., IKS, Inc. and IKS Newco, Inc., Kirkland, WA: March 10, 2003.
TA–W–54,752; Bausch and Lomb, Inc., including leased workers of Kelly Services, Salt Lake City, UT: April 20, 2003.
TA–W–54,655; KF Industries, Inc., Oklahoma City, OK: March 31, 2003.
TA–W–54,842; Chicago Rawhide, a subsidiary of SKF, Franklin, NC: May 4, 2003.
TA–W–54,777; Crown Risdon USA, Inc., Risdon-AMS, Danbury, CT: April 26, 2003.
TA–W–54,757; Vac Magnetics Corp., Elizabethtown, KY: April 14, 2003.
TA–W–54,393 & A; Johnson Controls Interior, Interior Technology Plant, a div. of Johnson Controls, Holland, MI and Cottonwood Plant, a div. of Johnson Controls, Holland, MI: February 24, 2003.
TA–W–54,686; L & L Knitting, Inc., a subsidiary of V.I. Prewett & Son, Inc., Ft. Payne, AL: April 6, 2003.
TA–W–54,590; Medex, Inc., formerly Ethicon Endo-Surgery, a div. of Johnson and Johnson, including leased workers of Kelly Services and Randstad, Southington, CT: March 24, 2003.
TA–W–54,632 & A; Alpine Electronics of America, Inc., Greenwood, IN and McAllen, TX: March 25, 2003.
TA–W–54,734; RR Donnelley Norwest, Inc., including leased workers of Staffmark, Portland, OR: April 15, 2003.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–54,703; Standard Steel, LLC, Latrobe, PA: April 8, 2003.
TA–W–54,533; Brighton Falls Chine, Beaver Falls, PA: February 25, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–54,686; L & L Knitting, Inc., a subsidiary of V.I. Prewett & Son, Inc., Ft. Payne, AL.

The Department has determined that criteria (1) and (2) of section 246 have not been met. Workers at the firm are 50 years of age or older. The competitive conditions within the workers' industry is adverse.

TA–W–54,393 & A; Johnson Controls Interior, Interior Technology Plant, a div. of Johnson Controls, Holland, MI and Cottonwood Plant, a div. of Johnson Controls, Holland.

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–54,651; Excel Dowel Wood Products, Inc., New Portland, ME;
TA–W–54,658; Whiting Manufacturing Co., Inc., Hazel Green, KY;
TA–W–54,614; Idra Prince, Holland, MI;
TA–W–54,549; 3M Precision Optics, Cincinnati, OH;
TA–W–54,820; Moosehead Manufacturing Co., Monson, ME;
TA–W–54,734; RR Donnelley Norwest, Inc., including leased workers of Staffmark, Portland, OR;
TA–W–54,697; Plastic Molding Technology, Seymour, CT;
TA–W–54,632 & A; Alpine Electronics of America, Inc., Greenwood, IN and McAllen, TX;
TA–W–54,590; Medex, Inc., formerly Ethicon Endo-Surgery, a div. of Johnson and Johnson, including leased workers of Kelly Services and Randstad, Southington, CT;
TA–W–54,045; United Steel Corp., Gary Works, Coke Products Div., Gary, IN, A; Gary Works, Iron Producing Div., Gary, IN, B; Gary Works, Steel Producing Div., Gary, IN, C; Gary Works, Hot Rolling Div., Gary, IN, E; Gary Works, Gary Tin Div., Gary, IN, G; Gary Works, Operations Services Div., Gary, IN, H; Gary Works, Staff Group, Gary, IN, I; Gary Works, Administrative Div., Gary, IN and J; East Chicago Tin, East Chicago, IN.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–54,559; Cequent Trailer Products, formerly Hammerblow Corp., Wausau, WI;
TA–W–54,484; Cady Industries, Inc., Pearson, GA;
TA–W–54,275; Smith Meter, Inc., (also known as FMC Measurement Solutions), a subsidiary of FMC Technologies, Inc., Erie, PA;
TA–W–54,432; American Hofmann Corp., a subsidiary of Hofmann Mondial, Inc., Lynchburg, VA;
TA–W–54,239; Heartland Rig International LLC, Brady, TX;
TA–W–54,618; Dayton Technologies, Wilmington, DE;
TA–W–54,713; Indiana Die Molding LLC, Fort Wayne, IN;

TA–W–54,487; Maple Mountain Industries, Inc., Meyersdale, PA;
TA–W–54,524; Straitoplane, Inc., Grand Rapids, MI;
TA–W–54,624; Belarus Tractor International, Milwaukee, WI;
TA–W–54,524; ADM Milling Co., including leased workers of Cornwell Staffing Services, D.C. Staffing Services and Crown Services, Inc., Milwaukee, WI;
TA–W–54,574; Morgan Construction Co., Worcester, MA;
TA–W–54,733; Bridges Hosiery Mill, Hildebran, NC;
TA–W–54,705; Ozark Iron Works, LLC, (formerly known as Calico Rock Iron Works, Inc.), a div. of Sommer Metalcraft, Calico Rock, AR;
TA–W–54,763; Peterson Spring Co., a subsidiary of Peterson American Corp., Greenville, IL;
TA–W–54,681; 5 B'S, Inc., Cut and Sew Div., Barnesville, OH;
TA–W–54,455; Weirton Steel Corp., Weirton, WV;
TA–W–54,702; Travelocity, Clintwood, VA;
TA–W–54,704; West Telemarketing Corporation Outbound, Smith, AR;
TA–W–54,771; The Penn Traffic Co., Syracuse, NY;
TA–W–54,717; Harris Interactive, Inc., Data Collection Services, Rochester, NY;
TA–W–54,546; United Services Automobile Association Property and Casualty Insurance, Western Regional Office, a div. of The United Services Automobile Association, Sacramento, CA;
TA–W–54,570; Imperial Home Décor Group Holdings, Inc., Knoxville, TN;
TA–W–54,587; Ness U.S.A., Inc., Hackensack, NJ;
TA–W–54,621; Western, a div. of W.P. Industries, Norwalk, CA;
TA–W–54,622; Henderson Sewing Machine Co., Andalusia, AL;
TA–W–54,623; Piedmont Sewing Machine and Supply Corp., Pittsburgh, PA;
TA–W–54,330; Allied Holdings, Inc., Decatur, GA;
TA–W–54,536; Acorn Products Co., Inc., Bridgton, ME;
TA–W–54,626; Distribution Dynamics, Inc., Portland, OR;
TA–W–54,502; Goodrich Corp., Englewood, NJ;
TA–W–54,600; Measurement Specialties, Inc., Consumer Products Div., Fairfield, NJ;
TA–W–54,649; Cigna Healthcare, IT Software Development and Support Div., Hooksett Facility, a div. of The Cigna Corp., Hoodsett, NH;
TA–W–54,375; International Paper Co., Atlantic Region Forest Resources Div., Georgetown, SC;
TA–W–54,431; Dexter Shoe Co., Dexter Maine Plant, Dexter, ME;
TA–W–54,794; Imperial Home Décor, Beachwood, OH;
TA–W–54,343; Kenneth Cole Services, Inc., a div. of Kenneth Cole Productions, Inc., Secaucus, NJ;
TA–W–54,395; Great Lakes Gas Transmission Co., Troy, MI;
TA–W–54,421; Sykes Enterprises, Inc., Ada, OK;
TA–W–54,785; AVX Corp., Advance Planning Administration, Myrtle Beach, SC;
TA–W–54,802; New Roads, Inc., Martinsville, VA;
TA–W–54,762; IntelliRisk Management, Inc., Cedar Falls, IA;
TA–W–54,678; C and L Custom Tooling, LLC, Clackamas, OR;
TA–W–54,526; Elder Manufacturing Co., Inc., Dexter Facility, Dexter, MO;
TA–W–54,739; Robert Bosch Corp., Automotive Chassis Div., St. Joseph, MO;
TA–W–54,453; Agilent Technologies, Inc., Manufacturing Test Business Unit, Loveland, CO;
TA–W–54,112; Allegheny Technologies, Inc., Allvac Div., Monroe, NC;
TA–W–54,633; Philips Consumer Electronics, Business Creation for Projection Television Div., Knoxville, TN;
TA–W–54,670; Pioneer Americas LLC, Henderson Plant, Henderson, NV;
TA–W–54,646; Advanced Glassfiber Yarns, LLC, (also known as AGY Huntingdon, LLC), a div. of AGY Holdings, South Hill, VA;
TA–W–54,045D; United States Steel Corp., Gary Works, Sheet Products Div., Gary, IN;
TA–W–54,045F; United States Steel Corp., Gary Works, Plate Products Div., Gary, IN.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–54,687; REGAU, Inc., Springfield, VT: April 1, 2003.
TA–W–54,558; TRW Automotive, North American Braking Div., Sterling Heights, MI: March 15, 2003.
TA–W–54,484A; Cady Industries, Inc., Memphis, TN: March 11, 2003.
TA–W–54,465; Paris Accessories, Inc., Walnutport, PA: March 10, 2003.
TA–W–54,707; Quincy Products, a div. of Valley Industries, Inc., Quincy, MI: April 8, 2003.
TA–W–54,669; American Meter Co., Erie, PA: April 2, 2003.
TA–W–54,616; B & C Hosiery, Inc., Hosiery Greige Mill Div., Henagar, AL: March 19, 2003.
TA–W–54,657; Sterling and Adams Bentwood, Inc., including leased workers of Carolina Personnel and Atwork Temp Service, Thomasville, NC: March 22, 2003.
TA–W–54,452; A.E. Nathan Co., Inc., a div. of Jaftex Corp., Henderson, NC: March 8, 2003.
TA–W–54,534; Newton Hardwoods, Madison, ME: March 15, 2003.
TA–W–54,564; Hirsh Industries, Des Moines, IA: March 22, 2003.
TA–W–54,389; Slater Lemont Corp., a subsidiary of Slater Steels Corp., Lemont, IL: February 25, 2003.
TA–W–54,710; Veltri Metal Products, Inc., Celina Tennessee Plant, including leased workers of The Holland Group, and Atwork Cumberland Staffing, Celina, TN: April 12, 2003.
TA–W–54,760; SNC Manufacturing Co., Inc., Oshkosh, WI: April 19, 2003.
TA–W–54,639; PL Subsidiary, Inc., Winder, GA: March 29, 2003.
TA–W–54,676; Ottis Elevator Co., Bloomington Plant, a subsidiary of United Technologies Corp., Bloomington, IN: May 9, 2004.
TA–W–54,580; Plainsman Hosiery, Inc., Fort Payne, AL: March 15, 2003.
TA–W–54,467; RBX Industries, Inc., Bedford, VA: March 5, 2003.
TA–W–54,582; Missbrenner Wet Printing, Inc., Clifton, NJ: March 24, 2003.
TA–W–54,691; R.A.G.S., Inc., Albemarle, NC: March 31, 2003.
TA–W–54,711; Stocker Yale, Inc., Salem, NH: April 12, 2003.
TA–W–54,703; Standard Steel, LLC, Latrobe, PA: April 8, 2003.

TA–W–54,727; Tyco Healthcare Kendall, including leased workers of Keena Staffing Co., and Park Personnel, Argyle, NY: April 14, 2003.

TA–W–54,795; Kawai America Manufacturing, Inc., Lincolnton, NC: April 22, 2003.

TA–W–54,552; ISM Fastening Systems, formerly International Staple and Machine Co., a subsidiary of ISM Investments, Inc., Butler, PA: February 19, 2003.

TA–W–54,381 & A; YKK (USA), Inc., Okmulgee Div., a subsidiary of YKK America, Macon, GA and Chesney Div., a subsidiary of YKK America, Macon, GA: March 1, 2003.

TA–W–54,627; CFM Home Products, a div. of CFM U.S. Corp., Ardmore, TN: March 11, 2003.

TA–W–54,644; Celestica, Inc., including leased workers of Adecco Employment Services, Chippewa Falls, WI: March 31, 2003.

TA–W–54,730; Manpower, Workers at Johnston Industries, Inc., Dewitt Plant, Dewitt, IA: April 15, 2003.

TA–W–54,565; Peavey Electronics Corp., Foley Div., Foley, AL: March 15, 2003.

TA–W–54,799; Northland Extension Drills, Inc., Grove City, MN: April 27, 2003.

TA–W–54,743; Acme Pad Corp., Baltimore, MD: April 15, 2003.

TA–W–54,769 & A; Takata Petri, Inc., Steering Wheel Div., a subsidiary of TK Holdings, Inc., Port Huron, MI and Steering Wheel Frame Div., a subsidiary of TK Holdings, Inc., Port Huron, MI: April 22, 2003.

TA–W–54,606; Pride Manufacturing, Inc., a div. of Cintas Corp., Portal, GA: March 15, 2003.

TA–W–54,668; Damy Industries, Inc., Athens, TN: October 23, 2003.

TA–W–54,477; Simonds International, Kirkland Washington Div., IKS, Inc. and IKS Newco, Inc., Kirkland, WA: March 10, 2003.

TA–W–54,533; Brighton Falls China, Beaver Falls, PA: February 25, 2003.

TA–W–54,815; Jami Services Corp., including leased workers of Signum, LLC, Bishopville, SC: April 28, 2003.

TA–W–54,752; Bausch & Lomb, Inc., including leased workers of Kelly Services, Salt Lake City, UT: April 20, 2003.

TA–W–54,840; Ranco North America, LP, a subsidiary of Invensys, including leased workers of Acloche, Plain City, OH: May 3, 2003.

TA–W–54,842; Chicago Rawhide, a subsidiary of SKF, Franklin, NC: May 4, 2003.

TA–W–54,655; KF Industries, Inc., Oklahoma City, OK: March 31, 2003.

TA–W–54,777; Crown Risdon USA, Inc., Risdon-AMS, Danbury, CT: April 26, 2003.

TA–W–54,757; Vac Magnetics Corp., Elizabethtown, KY: April 14, 2003.

I hereby certify that the aforementioned determinations were issued during the months of April and May 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 20, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–12388 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Benefits, Timeliness, and Quality Data Collection System; Comment Request

ACTION: Notice; Request for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with a provision of the Paperwork Reduction Act of 1995 at 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Benefits Timeliness and Quality (BTQ) data collection system, which is part of the Unemployment Insurance (UI) performance measurement system.

The Department plans to issue a **Federal Register** notice (FRN) requesting comments on proposed changes to UI Performs. That FRN may overlap with this request for renewal of the data collection system. While the proposed changes would shift emphasis of the Federal performance review, changes to the current BTQ data collection should be minimal and burden hours likely will not change.

DATES: Submit comments on or before August 2, 2004.

ADDRESSESS: Send comments to Ms. Geri Oberloh, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4522, Washington, DC 20210, (202) 693–3194. (This is not a toll-free number.) E-mail comments to *Oberloh.Geri@dol.gov*; or fax to (202) 693–3975.

FOR FURTHER INFORMATION CONTACT: Ms. Geri Oberloh, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4522, Washington, DC 20210, (202) 693–3194. (This is not a toll-free number.) E-mail *Oberloh.Geri@dol.gov;* or fax to (202) 693–3975.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor under the Social Security Act, title III, section 302 (42 U.S.C. 502), funds the necessary cost of proper and efficient administration of each state UI law. The BTQ program collects information and analyzes data to do this. The BTQ measures look at timeliness and quality of states' performance, various administrative actions and administrative decisions concerning UI benefit operations.

II. Desired Focus of Comments

Currently, the Department is soliciting comments concerning the proposed extension of the collection of benefits timeliness and quality reports which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Benefits, Timeliness, and Quality Review.

OMB Number: 1205–0359.

Affected Public: State Government.

Agency Form Numbers: ETA–9050, ETA–9051, ETA–9052, ETA–9053, ETA–9054, ETA–9055, ETA–9056, ETA–9057.

Total Respondents: 53.

Frequency: Monthly and Quarterly.

Total Responses: 28,912.

Average Time per Response: 0.7 hours.

Summary of Burden:

Monthly Universe Measures: STATE STAFF HOURS PER YEAR

ETA report	Measure	Number of respondents	Reports per year	Total responses	Hrs. per resp.	Total hrs/year
9050	First Payment Time Lapse, Tier I	53	12	636	.5	318
9050	First Payment Time Lapse, Partial/Part Total Claims, Tier II.	53	12	636	.5	318
9050	First Payment Time Lapse, Workshare Claims, Tier II.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Tier II.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Partial Part/Total, Tier II.	53	12	636	.5	318
9051	Continued Weeks Compensated Time Lapse, Workshare, Tier II.	53	12	636	.5	318
9052	Nonmonetary Determinations Time Lapse, Tier I, Detection Date.	53	12	636	1.0	636
9053	Nonmonetary Determinations Time Lapse, Report Only.	53	12	636	1.0	636
9054	Lower Authority Appeals Time Lapse, Tier I.	53	12	636	.5	318
9055	Lower Authority Appeals Case Aging, Tier II.	53	12	636	1.0	636
9054	Higher Authority Appeals Time Lapse, Tier I.	53	12	636	.5	318
9055	Higher Authority Appeals Case Aging, Tier II.	53	12	636	1.0	636
Subtotal						5,088

Quarterly Sample Review Measures: STATE STAFF HOURS PER YEAR

ETA report	Measure	Number of respondents	Sampled cases reviewed per year	Total cases reviewed per year	Hrs. per resp.	Total hrs/year
9056	Nonmonetary Determination Quality, Tier I	29 Small States	240	6,960	1	6,960
9056	Nonmonetary Determination Quality, Tier I	24 Large States	400	9,600	1	9,600
9057	Lower Authority Appeals Quality, Tier I	47 Small States	80	3,760	3.5	13,160
9057	Lower Authority Appeals Quality, Tier I	6 Large States	160	960	3.5	3,360
Subtotal						33,080

Estimated Total Burden Hours: 38,168 hours.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Dated: May 25, 2004.

Cheryl Atkinson,

Administrator, Office of Workforce Security, Washington, DC.

[FR Doc. 04–12378 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Training Plans and Certificate of Training

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation

program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before August 2, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977 (Mine Act), recognizes that the role of education and training in the improvement of miner health and safety is an important element of federal efforts to make the nation's mines safer places in which to work. Section 115(a) of the Mine Act states that ''each operator of a coal or other mine shall have a health and safety program which shall be approved by the Secretary.'' Title 30, CFR 48.3 and 48.23 specifically address the requirements for training plans. Section 115(a) of the Mine Act requires that each mine operator have a program approved by the Secretary for training miners in the health and safety aspects of mining. Section 115(c) requires (a) that the mine operator certify on a form approved by the Secretary that the miner has received the specified training in each subject area of the approved health and safety training plan; (b) that the certificates be maintained by the operator and be available for inspection at the mine site; and (c) that the miner is entitled to a copy of the certificate upon completion of the training and when he leaves the operator's employ. Title 30, CFR part 48 implements section 115 of the Act by setting forth the requirements for obtaining approval of training programs and specifying the kinds of training, including refresher and hazard training, which must be provided to the miners. The standards are intended to ensure that miners will be effectively trained and certified in matters affecting their health and safety, with the ultimate goal being the reduction of frequency and severity of the injuries in the nation's mines.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Training Plans. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

Approved training plans are used to implement training programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training. The plans are also used by MSHA to ensure that all miners are receiving the training necessary to perform their jobs in a safe manner. MSHA Form 5000–23, Certificate of Training, is used by mine operators to record mandatory training received by miners. Each form provides the mine operator with a recordkeeping document, the miner with a certificate of training, and MSHA a monitoring tool for determining compliance requirement. Currently the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Training Plans and Certificates of Training.

Type of Review: Extension of Currently Approved Collection.

Agency: Mine Safety and Health Administration.

Title: Training Plans and Certificate of Training.

OMB Number: 1219–0009 Extension.

Affected Public: Business or other for-profit.

Frequency: Annually and On Occasion.

Number of Respondents: 4,267.

Number of Annual Responses: 113,272.

Estimated Time Per Response: 8 hours to develop training plan; 5 minutes to prepare certificate of training.

Total Burden Hours: 19,519 hours.

Total Annualized Capital/startup Costs: $0.

Total Annual (Operating and Maintenance): $226,612.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 24th day of May, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–12377 Filed 6–1–04; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Provision for the Delivery of Legal Services Committee

TIME AND DATE: The Provision for the Delivery of Legal Services Committee of the Legal Services Corporation Board of Directors will meet June 4, 2004. The meeting will begin at 2 p.m. and continue until completion of the Committee's agenda.

LOCATION: Hilton Omaha, Hill Room, 1001 Cass Street, Omaha, Nebraska 68102.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of April 30, 2004.

3. Presentation on Challenges in the Delivery of Quality Legal Services in Rural Areas:

a. Presentation by Pat McClintock, Deputy Director/Program Administrator and Manager of Iowa Legal Aid's Technology Innovations.

b. Presentation by Gail Klearman, Managing Attorney of Iowa Legal Aid's Survivors and Families Rural Access Project.

c. Presentation by Scott Hartsook, Managing Attorney of Iowa Legal Aid's Legal Hotline for Older Iowans and Previous Manager of the Iowa Legal Aid Farm Project.

d. Presentation by Frank Tenuta, Managing Attorney of Iowa Legal Aid's Northwest Iowa Regional Office.

4. Presentation by Lillian Johnson on a proposed mentoring project.

5. Public comment.

6. Consider and act on other business.

7. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: May 26, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–12582 Filed 5–28–04; 1:37 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet June 4, 2004. The meeting will commence immediately following conclusion of the Provision for the Delivery of Legal Services Committee meeting, the deliberations of which are anticipated to terminate at approximately 3:45 p.m.

LOCATION: The Hilton Omaha, Hill Room, 1001 Cass Street, Omaha, Nebraska 68102.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of the minutes of the Committee's meeting of April 30, 2004.

3. Report on FY 2004 Internal Budgetary Adjustments as recommended by the President and Inspector General.

4. Consider and act on any FY 2004 COB Reallocations as recommended by the President and/or Inspector General.

5. Report on LSC's Financial Report for the Seven-Month Period Ending April 30, 2004.

6. Report on the status of the FY 2005 Appropriations process.

7. Preliminary discussion regarding the FY 2006 Budget ''Mark''.

8. Consider and act on other business.

9. Public comment.

10. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: May 26, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–12583 Filed 5–28–04; 1:37 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet June 5, 2004. The meeting will begin at 9 a.m., and continue until completion of the Committee's agenda.

LOCATION: The Hilton Omaha, Hill Room, 1001 Cass Street, Omaha, Nebraska 68102.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of the Committee's meeting minutes of May 1, 2004.

3. Consider and act on retainer agreement and group representation issues relating to LSC open rulemaking on financial eligibility, 45 CFR part 1611:

a. Staff report; and

b. Public comment.

4. Consider and act on revisions to the standard LSC Grant Assurances that LSC requires of its grantees:

a. Staff report; and

b. Public comment.

5. Other public comment.

6. Consider and act on other business.

7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: May 26, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–12584 Filed 5–28–04; 1:37 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Search Committee for LSC Inspector General

TIME AND DATE: The Search Committee for LSC Inspector General of the Legal Services Corporation Board of Directors will meet June 5, 2004. The meeting will commence immediately following conclusion of the Operations and Regulations Committee meeting, which is anticipated to conclude at approximately 11 a.m.

LOCATION: The Hilton Omaha, Hill Room, 1001 Cass Street, Omaha, Nebraska 68102.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Committee may consider and act on applications submitted for the position of Inspector General of the Legal Services Corporation. The closing is authorized by 5 U.S.C. 552b(c)(6) and LSC's corresponding regulation 45 CFR 1622.5(e).

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of the minutes of the Committee's meeting of May 1, 2004.

3. Consider and act on future activities for the Committee.

4. Public comment.

5. Consider and act on other business.

Closed Session

6. Consider and act on applications for the position of LSC Inspector General.

7. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: May 26, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–12585 Filed 5–28–04; 1:37 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet June 5, 2004. The Board will convene following a lunch break expected to conclude at approximately 1:30 p.m. It is possible that the meeting may convene earlier or later than expected, depending upon the length of committee meetings occurring in the morning.

LOCATION: The Hilton Omaha, Hill Room, 1001 Cass Street, Omaha, Nebraska 68102.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by 5 U.S.C. 552b(c)(2) and LSC's corresponding regulation 45 CFR 1622.5(a); 5 U.S.C. 552b(c)(6) and LSC's corresponding regulation 45 CFR 1622.5(e); 5 U.S.C. 552b(c)(7) and LSC's implementing regulation 45 CFR 1622.5(f)(4), and 5 U.S.C. 522b(c)(9)(B) and LSC's implementing regulation 45 CFR 1622.5(g); and 5 U.S.C. 552b(c)(10) and LSC's corresponding regulation 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of minutes of the Board's meeting of May 1, 2004.

3. Approval of minutes of the Executive Session of the Board's meeting of May 1, 2004.

4. Chairman's Report.

5. Members' Reports.

6. President's Report.

7. Acting Inspector General's Report.

8. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.

9. Consider and act on the report of the Board's Finance Committee.

10. Consider and act on the report of the Board's Operations & Regulations Committee.

11. Consider and act on the report of the Board's Search Committee for LSC President and Inspector General.

12. Consider and act on the locations of the Board's meetings for the remainder of calendar year 2004.

13. Consider and act on other business.

14. Public comment.

15. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

16. Briefing by the Acting Inspector General on the activities of the Office of Inspector General.

17. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

18. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: May 26, 2004.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 04–12586 Filed 5–28–04; 1:38 pm]

BILLING CODE 7050–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Paperwork Reduction Act; OMB Approval; Comment Request

AGENCY: Office of National Drug Control Policy.

ACTION: Notice.

SUMMARY: The Office of National Drug Control Policy (ONDCP) seeks Office of Management and Budget (OMB) approval and clearance for the collection of information. The public may request additional information from ONDCP including copies of the proposed collection of information and supporting documentation. Comments should be addressed within 30 days to OMB Office of Information and Regulatory Affairs (OIRA) Attention: Desk Office for ONDCP.

ADDRESSES: Request additional information from ONDCP's Office of Planning and Budget, 750 17th Street, Washington, DC 20503 or fax the request to (202) 395–6729. Comments may be addressed to OMB at 725 17th Street, Washington, DC 20503.

Dated: May 27, 2004.

Daniel R. Petersen,

Assistant General Counsel.

[FR Doc. 04–12424 Filed 6–1–04; 8:45 am]

BILLING CODE 3180–02–M

NATIONAL LABOR RELATIONS BOARD

Realignment of Regional Office Geographic Boundaries

AGENCY: National Labor Relations Board.

ACTION: Notice of geographic realignment of the following Regional Offices: Philadelphia (Region 4), Baltimore (Region 5), Pittsburgh (Region 6), St. Louis (Region 14), Ft. Worth (Region 16), Memphis (Region 26) and Phoenix (Region 28).

SUMMARY: The National Labor Relations Board gives notice of its intent to realign the geographic boundaries between the Pittsburgh, Baltimore and Philadelphia Regional Offices, between the St. Louis and Memphis Regional Offices, and between the Ft. Worth and Phoenix Regional Offices. This realignment is being effectuated in order to improve service to the public, promote increased administrative efficiency and reduce travel costs and staff time spent in transit. Accordingly, the jurisdiction over the following counties is transferred as indicated.

County and state	Transferring region	Receiving region
New Castle, DE	Baltimore	Philadelphia.
Schuylkill and Lebanon Counties, PA	Pittsburgh	Philadelphia.
Juniata, Perry and Dauphin Counties, PA	Pittsburgh	Philadelphia.
Dunkin, Mississippi, New Madrid and Pemiscot Counties, MO	St. Louis	Memphis.
El Paso, Hudspeth and Culbertson Counties, TX	Ft. Worth	Phoenix.

Cases that are pending as of the effective date of the realignment will remain in the Regional Office in which they were originally filed for further processing unless the parties to a specific case are advised otherwise by an order transferring that case.

EFFECTIVE DATE: June 2, 2004.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570–0001.

The addresses of the Regional Offices affected by the realignment are:

National Labor Relations Board, Region 4, 615 Chestnut Street, 7th Floor, Philadelphia, PA 19106–4404, (215) 597–7601.

National Labor Relations Board, Region 5, The Appraisers Store Building, 103 South Gay Street, 8th Floor, Baltimore, MD 21202–4061, (410) 962–2822.

National Labor Relations Board, Region 6, 1000 Liberty Avenue, Room 1501, Pittsburgh, PA 15222–4173, (412) 395–4400.

National Labor Relations Board, Region 14, 1222 Spruce Street, Room 8302, St. Louis, MO 63103–2829, (314) 539–7770.

National Labor Relations Board, Region 16, 819 Taylor Street, Room 8A24, Fort Worth, TX 76102–6178, (817) 978–2921.

National Labor Relations Board, Region 26, 1407 Union Avenue, Suite 800, Memphis, TN 38104–3627, (901) 544–0018.

National Labor Relations Board, Region 28, 2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004–3099, (602) 640–2160.

Dated, Washington, DC, May 27, 2004.

By direction of the Board.

Lester A. Heltzer,

Executive Secretary, National Labor Relations Board.

[FR Doc. 04–12400 Filed 6–1–04; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL LABOR RELATIONS BOARD

Proposed Merger of Regional Offices

AGENCY: National Labor Relations Board.

ACTION: Notice of the proposed merger of the Milwaukee Regional Office with the Minneapolis Regional Office and transfer of supervision over the Des Moines Resident Office from the Minneapolis Regional Office to the Kansas City Regional Office.

SUMMARY: The National Labor Relations Board gives notice of its proposal to merge the Milwaukee and Minneapolis Regional Offices. Minneapolis would remain a Regional Office and Milwaukee would become a Sub-Regional Office under the supervision of the Regional Director in the Minneapolis Regional Office. The Milwaukee Sub-Regional Office would be headed by an Officer-in-Charge. The Milwaukee Sub-Regional Office would continue to provide a full range of services to the public and practitioners for the 50 counties in Wisconsin and 11 counties in the Upper Peninsula of Michigan that it presently serves. Hearing space would be maintained in Milwaukee for the conduct of representation hearings and unfair labor practice trials.

The main impact of the proposed merger on the public served by the Milwaukee office would be that the Regional Director who would decide whether to issue complaints or approve settlement agreements in unfair labor practice cases and make determinations in representation cases would be resident to Minneapolis, rather than Milwaukee.

As part of the proposed merger, the supervision of the Des Moines Resident Office, which currently serves 88 counties in Iowa, would be transferred from the Minneapolis Regional Office to the Kansas City Regional Office. The main impact of this proposed action upon the public served by the Des Moines Resident Office would be that the Regional Director who would decide whether to issue complaint or approve settlement agreements in unfair labor practice cases and make determinations in representation cases would be resident in Kansas City, rather than Minneapolis.

The proposed merger of the Minneapolis and Milwaukee Regional Offices and the reassignment of the Des Moines Resident Office are prompted by a decline in unfair labor practice and representation case filings in the Minneapolis and Milwaukee offices and a desire to equalize caseload and case management responsibilities in the three contiguous Regional Offices. Under the proposed merger, the Statement of Organization and Functions published at 53 FR 10305–10308 on March 30, 1998, would be further amended to reflect the addition of Sub-Region 30, the elimination of Region 30 and the transfer of the territory in the State of Iowa served by the Des Moines Resident Office from Region 18, Minneapolis, to Region 17, Kansas City.

DATES: *Comment Period:* July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Please forward comments to: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Room 11600, Washington, DC 20570–0001.

The addresses of the Regional Offices affected by the proposed merger are:

National Labor Relations Board, Region 17, 8600 Farley Street, Suite 100, Overland Park, KS 66212–4677, (913) 967–3000;

National Labor Relations Board, Region 18, 330 South Second Avenue, Suite 790, Minneapolis, MN 55401–2221, (612)–348–1757;

National Labor Relations Board, Region 30, 310 West Wisconsin Avenue, Suite 700, Milwaukee, WI 53203–2211, (414)–297–3861;

National Labor Relations Board, Des Moines Resident Office, 210 Walnut Street, Room 439, Des Moines, IA 50309–2103.

Dated: Washington, DC, May 27, 2004.

By direction of the Board:

Lester A. Heltzer,

Executive Secretary, National Labor Relations Board.

[FR Doc. 04–12401 Filed 6–1–04; 8:45 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License to Import Radioactive Waste

Pursuant to 10 CFR 110.70(C) ''Public notice of receipt of an application,'' please take notice that the U.S. Nuclear Regulatory Commission has received the following request for an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning this amendment request follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application number Docket number	Description of material		End use	Country of origin
	Material type	Total quantity		
Diversified Scientific Services, Inc.; March [16, 2004; April 21, 2004; IW015; 11005485.	Class A radioactive mixed waste in various forms including solids, semi-solids, and liquids.	20,000 kg mixed waste containing 100 curies tritium and carbon-14, and 100 curies mixed fission product radionuclides and other contaminants.	Thermal destruction.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 21st day of May, 2004 at Rockville, Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 04–12376 Filed 6–1–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of May 31, June 7, 14, 21, 28, July 5, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 31, 2004

Wednesday, June 2, 2004

9:30 a.m.—Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

This meeting will be webcast live at the Web address—*www.nrc.gov*

1:30 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of June 7, 2004—Tentative

Thursday, June 10, 2004

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1)

Week of June 14, 2004—Tentative

There are no meetings scheduled for the Week of June 14, 2004.

Week of June 21, 2004—Tentative

There are no meetings scheduled for the Week of June 21, 2004.

Week of June 28, 2004—Tentative

There are no meetings scheduled for the Week of June 28, 2004.

Week of July 5, 2004—Tentative

There are no meetings scheduled for the Week of July 5, 2004.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 27, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–12518 Filed 5–28–04; 9:38 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49769; File No. SR–CBOE–2004–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Retroactive Crediting of Certain DPM Principal Acting as Agent Order Transaction Fees

May 25, 2004.

On March 9, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to change its Fee Schedule to retroactively credit Designated Primary Market-Makers (''DPMs'') for transaction fees they incur related to the execution of outbound ''principal acting as agent''

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''P/A'') Orders,[3] as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan''). On March 31, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.[4] The **Federal Register** published the proposed rule change, as amended, for comment on April 23, 2004.[5] The Commission received no comments on the proposed rule change. This order approved the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the proposed rule change, which would apply retroactively to July 1, 2003 an existing program that rebates transaction and trade match fees that DPMs incur when they trade against a customer order that underlies a P/A Order the DPM sent through the Intermarket Option Linkage (''Linkage''), and that credits the DPMs up to an additional 50% of such transaction and trade match fees (the ''50% rebate''),[8] will offset some of the fees that the DPMs have incurred for submitting P/A Orders through the Linkage since shortly after the full implementation of the Linkage. Moreover, the Commission notes that the proposed rule change clarifies that the DPM is eligible for the 50% rebate only when a DPM that sends a P/A Order incurs additional fees from another Participant for the execution of such a P/A Order, and clarifies that the aggregate amount of the 50% rebate for all DPMs will be limited to no more than the total amount of fees that the Exchange earns from fees generated by inbound Linkage transaction and trade match fees.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2004–13), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12369 Filed 6–1–04; 8:45 am]

BILLING CODE 8010–01–P

[3] A ''P/A Order'' is defined as an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. *See* Section 2(16) of the Linkage Plan.

[4] *See* Letter from Chris Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated March 26, 2004 (''Amendment No. 1''). In Amendment No. 1, the CBOE submitted a new Form 19b–4, which replaced and superceded the original filing in its entirety.

[5] *See* Securities Exchange Act Release No. 49575 (April 16, 2004), 69 FR 22110.

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (Notice of Filing and Immediate Effectiveness of SR–CBOE–2004–08).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49774; File No. SR–CHX–2003–24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Stock Exchange, Inc. Relating to the Definition of Primary Market

May 26, 2004.

I. Introduction

On August 14, 2003, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the Exchange's Rules Subcommittee to designate the primary market in each listed issue for purposes of determining limit order execution guarantees to be offered on the CHX. On January 29, 2004, the CHX amended the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 24, 2003.[4] The Commission received no comment letters with respect to the proposal.

On May 12, 2004, the CHX again amended the proposed rule change.[5] This order approves the proposed rule change, as amended by Amendment Nos 1 and 2. Because there was a mistake in the language of the proposed rule change as previously published, the Commission is publishing the language in this order.

The text of the proposed rule change, as amended, is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

CHICAGO STOCK EXCHANGE RULES

Article XX—Guaranteed Execution System and Midwest Automated Execution System

* * * * *

Rule 37

(a) Guaranteed Executions

* * * * *

(1)–(2) No change to text.

(3) Execution of Agency Limit Orders. Subject to Interpretation and Policy .10 (''Exempted Trade-throughs''), all agency limit orders in Dual Trading System issues will be filled under the following circumstances:

(a) Exhaustion of primary market bid or offer. When the bid or offering at the limit price has been exhausted in the primary market (as *designated by the Rules Subcommittee pursuant to Interpretation and Policy .07* [defined in the CTA Plan]), agency limit orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market.

* * * * *

Interpretations and Policies

* * * * *

.07 [[Reserved for future use]] *Unless otherwise authorized by the Exchange's Board of Governors, in designating the ''primary market'' for purposes of Rule 37(a)(3) of this Article XX, the Rules Subcommittee shall designate the initial listing market for a security as the primary market, unless that security is traded by either the New York Stock Exchange (''NYSE'') or the American Stock Exchange (''Amex''), in which case the primary market shall be the NYSE (for the securities it trades) or*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Kathleen Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 28, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the CHX's original 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 49437 (March 17, 2003), 69 FR 13924.

[5] *See* Letter from Kathleen Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division, Commission, dated May 11, 2004 (''Amendment No. 2''). Amendment No. 2 replaces and supersedes the CHX's original 19b–4 filing and Amendment No. 1 in their entirety. Amendment No. 2 only makes a technical correction to the proposed rule text; therefore, it is not subject to notice and comment.

the Amex (for the securities it trades). If a security is traded on both the NYSE and the Amex, whichever exchange is the initial listing market shall be designated as the primary market. If the initial listing market is a market other than the NYSE or the AMEX, but the subject security is traded by both the NYSE and the AMEX, the primary market shall be the market with the largest trading volume in the subject security, calculated on a twelve-month rolling basis.

* * * * *

II. Description of the Proposal and Amendment Nos. 1 and 2 Thereto

The CHX submitted a proposed rule change and Amendment Nos. 1 and 2 thereto to amend CHX Article XX, Rule 37(a)(3)(a), which governs execution of resting limit orders based on certain conditions in the primary market and to add proposed *Interpretation and Policy* .07. Specifically, the proposed rule change would permit the Exchange's Rules Subcommittee to designate the primary market in each listed issue for purposes of determining limit order execution guarantees to be offered on the CHX instead of using the current CTA Plan definition of a primary market.

Under the proposed change, as amended, the Exchange's Rules Subcommittee would be given the authority to define the primary market for listed securities, for purposes of determining the limit order execution guarantees offered on the Exchange. As an initial matter, the Rules Subcommittee intends to designate the initial listing market for a security as the primary market, unless that security is traded by either the New York Stock Exchange, Inc. (''NYSE'') or the American Stock Exchange LLC (''Amex''); if the security is traded by one of those markets, then the primary market would be the NYSE (for the securities it trades) and the Amex (for the securities it trades). If a security is traded on both the NYSE and the Amex, whichever of the two is the initial listing market would be designated as the primary market.[6] If the initial listing market is a market other than the NYSE or the Amex, but the subject security is traded by both the NYSE and the Amex, the primary market shall be the market with the largest trading volume in the subject security, calculated on a twelve-month rolling basis.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act, [7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that allowing the CHX's Rules Subcommittee to define the primary market for listed securities instead of using the current CTA Plan definition of primary market for purposes of determining limit order execution guarantees on the CHX should help to limit the continual redesignation of what the primary market is for a particular security. The Commission further believes that the proposed rule change, as amended, should help to alleviate any confusion for CHX order-sending firms and their customers as to what constitutes the primary market in a particular security. Finally, the Commission believes that the proposed rule change, as amended, should assist the CHX's Rules Subcommittee in consistently designating a market that is a significant source of liquidity, to the benefit of customers whose orders are routed to the CHX.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulation thereunder applicable to a national securities exchange, and, in particular, section 6(b)(5) of the Act.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–2003–24) and Amendment Nos. 1 and 2 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12428 Filed 6–1–04; 8:45 am]

BILLING CODE 8010–01–M

[6] If the Rules Subcommittee identifies a different designation for all listed securities traded on the Exchange, the Exchange will notify its order-sending firms of those Exchange-wide changes and file those changes with the Commission as an interpretation of an existing rule pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1). If, however, the Rules Subcommittee responds to the fragmentation in the market by identifying different designated markets for different securities, the Exchange will file, pursuant to Rule 19–4(f)(1), a new interpretation confirming that the Rules Subcommittee has identified different designated markets in different securities for purposes of this voluntary functionality, but will not list all of those different designations.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49772; File No. SR–CHX–2004–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated To Amend the CHX Membership Dues and Fees Schedule To Provide a Tape Credit of 50% to Specialists Trading Tape A and Tape B Securities

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On May 18, 2004, the CHX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the ''Fee Schedule''), effective February 1, 2004, to provide a tape credit of 50% to specialists trading Tape A and Tape B securities. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 completely replaced and superseded the original proposed rule change.

may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's current Fee Schedule, the Exchange provides tape credits to specialists trading Tape A and Tape B securities.[4] Specifically, under the Tape A credit program, the Exchange provides credits of 18% (for market share less than 7%), 45% (for market share between 7 and 12%) and 70% (for market share above 12%). A similar structure applies to the Tape B credit program, where the Exchange provides credits of 18% (for market share less than or equal to 5.75%) and 50% (for market share greater than 5.75%). These credits are expressed in marginal rates, however, so that no specialist receives the top level of credit for all trading in a particular security.[5] Specialists may also receive additional transaction credits under the Fee Schedule.[6]

The Exchange now proposes to amend the Fee Schedule, effective February 1, 2004, by providing a flat, not marginal, 50% tape credit to specialists trading Tape A and Tape B securities.[7] This tape credit program is designed to provide credits to specialist firms that trade Tape A and Tape B securities in a manner that rewards them for their trading on the Exchange.

The Exchange's proposal is substantially similar to tape credit or rebate programs that have been approved for other market centers.[8] As a result, the Exchange believes that the Commission would not be breaking new ground in approving this proposal; instead, it would only be allowing the Exchange to operate a market data revenue-sharing program that could compete on substantially similar footing with programs of other markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–08 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–08 and should be submitted on or before June 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12429 Filed 6–1–04; 8:45 am]

BILLING CODE 8010–01–P

[4] "Tape A Securities" are securities reported on Tape A of the Consolidated Tape Association. "Tape B Securities" are securities reported on Tape B of the Consolidated Tape Association.

[5] For example, if a specialist trades a Tape A security and had a 15% market share in that security, the Exchange would provide a credit of 18% on the trades that make up the first 7% of that market share, a credit of 45% on the trades that make up between 7 and 12% of that market share and a credit of 70% only on those trades that exceed 12% of market share.

[6] The Exchange implemented a program, effective May 1, 2003, to provide additional tape revenue to specialists from certain incremental increases in the Exchange's share of Tape A and Tape B volume. See Securities Exchange Act Release No. 48477 (September 4, 2003), 68 FR 53625 (September 11, 2003)(SR–CHX–2003–15).

[7] In the instant filing, the Exchange also (a) confirms that the specialist tape credits do not include any tape credits that might be paid to the Exchange's floor brokers under a separate tape program; and (b) deletes the provision currently in the Fee Schedule that relates to specialist credits available for trading that occurs during the E-Session, a trading session that no longer is held.

[8] *See e.g.*, Securities Exchange Act Release Nos. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR–BSE–2002–10)(approving proposal to (a) share 50% of Tape A revenues, in excess of a threshold amount, with eligible member firms; and (b) share 50% of net Tape B revenue per trade with member firms that route business to the BSE); 48106 (June 27, 2003), 68 FR 40318 (July 7, 2003)(SR–PCX–2002–62)(approving an ArcaEx revenue sharing program that shared 50% of gross Tape A revenues with eligible users of the ArcaEx facility); and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2002)(SR–NASD–2002–149)(approving a transaction credit program for the Nasdaq InterMarket that shared 50% of Tape A and Tape B revenues with eligible members, based on the members' pro rata share of transactions in those securities).

[9] 15 U.S.C. 78(f)(b)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49777; File No. SR–DTC–2004–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Establish a Valued Delivery Order Interface With the National Securities Clearing Corporation

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on May 3, 2004, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to amend its rules to establish a Valued Delivery Order Interface (''VDO Interface'') with the National Securities Clearing Corporation (''NSCC''). The VDO Interface will allow NSCC at the request of a common DTC/NSCC member to create delivery versus payment delivery orders for the member's NSCC balance orders and special trades to be transmitted automatically to DTC for processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC currently creates receive and deliver instructions for Balance Order Securities ''Balance Orders'' and for ''Special Trades'' (trade-for-trade transactions) which NSCC Members then have to manually enter into DTC as ''Valued Delivery Orders'' (''VDOs'').[3] In connection with NSCC's update of its Continuous Net Settlement System (''CNS Rewrite''),[4] NSCC requested DTC to establish an interface to automate and facilitate the processing and book-entry settlement of Balance Orders and Special Trades.

DTC and NSCC currently have an automated VDO municipal bond interface known as the PDQ Automated Municipal Bond Settlement Facility (''PDQ Facility''). Pursuant to the PDQ Facility, NSCC Members and NSCC Municipal Comparison Only Members (''MCOMs'') that are also DTC Participants (''common participants'') or that clear through DTC Participants may authorize NSCC to send to DTC their compared municipal bond transaction data in an automated file, and may authorize DTC to accept and input such data as VDOs.

As a result of requests from common participants and based upon DTC's and NSCC's positive experience with the PDQ Facility, DTC and NSCC are seeking to expand the PDQ Facility to include all NSCC Balance Orders and Special Trades for automatic processing at DTC as VDOs using the VDO Interface. The VDO Interface would convey VDO instructions for each common participant's Balance Orders and Special Trades pursuant to standing instructions from the common participant to NSCC. These standing instructions would be automatically transmitted to DTC for processing. For NSCC MCOMs that are not common participants, NSCC will create delivery versus payment VDO instructions for a MCOM's Special Trades if both the MCOM and its DTC clearing brokers each provide standing instructions to DTC to process such trades through the VDO Interface. The VDO Interface will incorporate the PDQ Facility's functionality and will replace the PDQ Facility.[5] Subject to Commission approval, DTC intends to implement the proposed rule change in conjunction with the implementation of NSCC's CNS Rewrite on or about July 9, 2004.

DTC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to DTC because it will promote the prompt and accurate clearance and settlement of securities transactions by increasing efficiency in processing member transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2004–04 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The terms Balance Order Securities and Special Trades are defined in Rule 1 of NSCC's Rules. The term Valued Delivery Order is a delivery versus payment as opposed to a Free Delivery where delivery is made free of any payment by the receiver.

[4] The Commission has published notice seeking comment on NSCC's CNS Rewrite. Securities Exchange Act Release No. 49717 (May 17, 2004), 69 FR 29605 (File No. SR–NSCC–2004–01).

[5] Telephone conversation between Diane L. Brennan, Director of Risk Management, DTC, and staff of the Division of Market Regulation, Commission (May 21, 2004).

[6] 15 U.S.C. 78q–1.

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2004–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2004–04 and should be submitted on or before June 23, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12430 Filed 6–1–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49770; File No. SR–Phlx–2004–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to a Temporary Waiver of Equity Option and Index Option Specialist Transaction Fees and ROT Comparison Fees for New and Recent Options Listings

May 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 21, 2004, the Exchange submitted Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, has been filed by the Exchange as establishing or changing a due, fee, or other charge pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to waive, for options other than those with a license fee, (1) specialist equity option and index option transaction charges[6] and Registered Options Trader (''ROT'') equity option and index option comparison charges[7] and (2) the amount of the applicable increase in the specialist unit fixed monthly fee (''fixed monthly fee''),[8] for all equity options and index options that begin trading on the Exchange between January 1, 2004 and June 30, 2004. The waiver of fees as described in this proposal is scheduled to become effective for transactions settling on or after May 1, 2004 through August 31, 2004.[9] The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 20, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange revised the filing to add language regarding the temporary fee waiver to the Exchange's Specialist Unit Fixed Monthly Fee Schedule and to make other non-substantive changes to the filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] Currently, specialist equity option transaction charges are $0.21 per contract and specialist index option transaction charges are $0.24 per contract.

[7] Currently, ROT equity option and index option comparison charges are $0.03 per contract.

[8] A specialist unit may elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and equity option specialist deficit (shortfall) fees. Currently, for specialist units who have elected to pay a fixed monthly fee and who obtain an equity option or index option book after a specified time period (either September 1, 2003 or March 1, 2004) as a result of a new Exchange listing, the methodology used to calculate the fixed monthly fee for the newly listed Exchange equity option or index option is the average of the two previous months' national volume multiplied by 12% with that product multiplied by 21%, which is then multiplied by the specialist unit's current transaction charge of $0.21. If an equity option or index option does not have a complete two months' volume, the then-current transaction charge is used until that option trades for two full calendar months nationally, after which the above methodology is applied. The fixed monthly fee is in effect through August 31, 2004. *See* Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (File No. SR–Phlx–2004–17). Therefore, pursuant to this proposal, if a specialist unit is currently paying a fixed monthly fee of $100,000 and as a result of a new Exchange listing would pay an additional fixed monthly fee of $20,000 per month as a result of the above-referenced methodology, the fee of $20,000 would be waived from May 1, 2004 through August 31, 2004 if the equity option or index option begins trading on the Exchange between January 1, 2004 and June 30, 2004.

[9] The fee schedule will note that the fees described in this proposal will be waived from May 1, 2004 through August 31, 2004. The Exchange will delete the reference to this limited waiver from its fee schedule after the specified time period has expired, pursuant to this proposed rule change.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create a financial incentive for equity option and index option specialists and ROTs to request to list and/or trade equity options and index options currently not listed on the Exchange or recently listed on the Exchange. The Exchange believes that this financial incentive may provide Phlx with the opportunity to increase the number of equity options and index options listed on the Exchange and increase its market share, which should, in turn, generate additional revenue for the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b–4(f)(2) thereunder,[13] because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–31 and should be submitted on or before June 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12368 Filed 6–1–04; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on May 21, 2004, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3578]

State of Iowa

As a result of the President's major disaster declaration on May 25, 2004, I find that Bremer, Buchanan, Butler, Cass, Cerro Gordo, Clayton, Delaware, Fayette, Hancock, Humboldt, Jones, Linn, Mitchell, and Pocahontas counties in the State of Iowa constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on May 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 26, 2004 and for economic injury until the close of business on February 25, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adair, Adams, Allamakee, Audobon, Benton, Black Hawk, Buena Vista, Calhoun, Cedar, Chickasaw, Clay, Clinton, Dubuque, Floyd, Franklin, Grundy, Guthrie, Hardin, Howard, Iowa, Jackson, Johnson, Kossuth, Montgomery, Palo Alto, Pottawattamie, Sac, Shelby, Webster, Winnebago, Winneshiek, Worth, and Wright in the State of Iowa; Mower county in the State of Minnesota; and Crawford and Grant counties in the State of Wisconsin.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere:	5.750
Homeowners Without Credit Available Elsewhere:	2.875
Businesses with Credit Available Elsewhere:	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	2.750

	Percent
Others (Including Non-Profit Organizations) with Credit Available Elsewhere:	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	2.750

The number assigned to this disaster for physical damage is 357812. For economic injury the number is 9ZF200 for Iowa; 9ZF300 for Minnesota; and 9ZF400 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 26, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–12406 Filed 6–1–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Data Recorder (FDR) Filtering

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to discuss a recommendation made by the National Transportation Safety Board (NTSB) to the Federal Aviation Administration (FAA) on the issue of filtering flight recorder data before it is recorded. This notice contains the date, times, location, and information for participation in the meeting.

DATES: The meeting will be held Wednesday, July 7, 2004, starting at 8:30 a.m., and ending at 4 p.m.

ADDRESSES: The meeting will be held at the NTSB Main Conference Room, NTSB Headquarters, 490 L'Enfant Plaza, SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: Technical questions about flight data recorder parameter filtering, and requests to present information at the public meeting should be directed to Timothy W. Shaver, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4686; facsimile (202) 385–4651; e-mail *tim.shaver@faa.gov*. For other information, contact Alicia K. Douglas, Aircraft and Airport Rules Division, ARM–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9681; facsimile (202) 267–5075; e-mail *alicia.k.douglas@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2001, an Airbus 300–600 experienced a loss of control on initial climbout and crashed into a residential area in Belle Harbor, New York. The NTSB is still investigating this accident. This accident investigation, and other accident investigations, have highlighted some data recording practices that lessen the usefulness of recorded data, and hinder evaluation of the flight control system's performance. As a result, the NTSB issued a letter with three Safety Recommendations, A–03–48 through 50, for changes to the flight data recorder rule for transport category aircraft. The FAA is working to address these recommendations. However, the FAA determined that we need more information from industry about current practices on processing of data as it gets recorded to address Recommendation A–03–50, which states:

''Require that within 2 years, all Airbus A300–600/A310 and Boeing 747–400 airplanes and any other aircraft that may be identified as recording filtered data be retrofitted with a flight data recorder system capable of recording values that meet the accuracy requirements through the full dynamic range of each parameter at a frequency sufficient to determine a complete, accurate, and unambiguous time history of parameter activity, with emphasis on capturing each parameter's dynamic motion at the maximum rate possible, including reversals of direction at the maximum rate possible. (A–03–50)''

Purpose of This Public Meeting

This meeting is being held to discuss the NTSB Safety Recommendation, A–03–50, and the issue of filtering flight recorder data before it is recorded. The purpose of this meeting is to gather information from industry about current practices on processing of data as it gets recorded on all transport airplanes. The FAA is interested in industry's position on the following:

- What data gets filtered before it is recorded, and how the filtering is accomplished.
- How individual manufacturers comply with the required ''method for readily retrieving'' the recorded data.
- What equipment and procedures would need to be changed, and the costs involved, if the FAA were to adopt the NTSB recommendation as written.

Participation at the Public Meeting

This meeting is open to anyone interested in FDR issues related to the referenced NTSB recommendation. Those attendees wishing to present data on this recommendation must submit the proposed presentation material to Timothy Shaver, Aircraft Certification Service, as listed in the section above, **FOR FURTHER INFORMATION CONTACT,** by June 28, 2004. Please include contact information for the presenter with the proposal. Also, if the presenter needs audiovisual equipment for the presentation, include information on the equipment required with your request to present; not every form of audiovisual device may be available. Presentation length will be limited to 30 minutes or less depending on the number of requests to present. We will notify presenters of their selection by July 1, 2004. If we receive requests to present after the date specified above, we may add the presentation to the schedule if there is time available during the meeting; however, the presentations and the names of the presenters may not appear on the written agenda.

The FAA will prepare an agenda of speakers and presenters and make the agenda available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures established for this meeting:

1. The will be no admission fee or other charge to attend or to participate in the public meeting.
2. Representatives from the FAA will conduct the public meeting. A panel of FAA experts will be present to ask questions of, and discuss information presented by participants, as appropriate.
3. FAA experts and public participants are expected to engage in a full discussion of all technical material presented at the meetings. Each person presenting conclusions will be expected to submit to the FAA data fully supporting those conclusions; all properly identified proprietary data submitted will be protected by the FAA from disclosure in accordance with applicable laws.
4. Statements made by members of the panel are intended to facilitate discussion of the issues or to clarify issues.
5. The meeting is designed to solicit public views and more complete

information relevant to flight data recorder issues related to the NTSB recommendation A–03–50. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

6. Participants must limit their presentations and submissions of data to flight data recorder issues related to the NTSB Recommendation A–03–50.

7. The FAA requests that presenters at the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the presenter.

8. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group. If practicable, the meeting may be accelerated to enable adjournment as scheduled.

9. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

10. The meeting will be recorded by a court reporter. A transcript of the meeting and all material accepted by the panel during the meeting will be made available, on request, unless protected from disclosure. Each person interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–12409 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City and County of San Francisco, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) will be prepared for a project in San Francisco, California, known as the Bayview Transportation Improvements Project.

FOR FURTHER INFORMATION CONTACT: Leland Dong, North Region Team Leader, Federal Highway Administration, 650 Capitol Mall Suite 4–100, Sacramento, California 95814, Telephone: (916) 498–5860 or Bill Wycko, San Francisco Planning Department, 1660 Mission Street, San Francisco, California 94103, Telephone (415) 558–5972.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an EIS for proposed improvements to the roadway system in the southeast sector of San Francisco, California. The project is needed to provide an alternate designated route for future truck traffic from US Highway 101 to the planned industrial portion of the redeveloped Hunters Point Shipyard and minimize travel time to the planned industrial portion of the Shipyard, as well as the existing industrial areas of the Bayview.

The study area is approximately bounded by Caesar Chavez Street to the north, the City and County of San Francisco border to the south, US Highway 101 to the west and San Francisco Bay to the east.

Seven build-alternatives have been identified. While these alternative routes attempt to avoid residential streets, a few residences can be found on some of the alternative alignments. Three of the alternatives involve constructing a new bridge over the Yosemite Slough or South Basin. Two alternatives use overland roadway routes only. Two alternatives involve construction of significant roadway structures. The roadway improvements required for each alignment vary. The build-alternatives, length, and highway connections are:

1. Long Bridge, 2.27 miles: Exits Northbound US 101 at Harney Way.
2. Medium Bridge, 3.12 miles: Exits Northbound US 101 at Harney Way.
3. Griffith Bridge, 3.34 miles: Exits Northbound US 101 at Harney Way.
4. Griffith Armstrong, 3.84 miles: Exits Northbound US 101 at Harney Way.
5. Carroll Avenue Overpass, 3.74 miles: Exits Northbound US 101 at Third Street/Bayshore Boulevard.
6. 3rd Street/Egbert/Ingalls, 3.45 miles: Exits USA 101 at Third Street/Bayshore Boulevard.
7. I–280 Islais Creek interchange, 6.28 miles: Exits I–280 at Evans Avenue.

Other alternatives to be considered include no-build, Transportation Systems Management (TSM) and mass transit. Although seven build-alternatives have been identified for study, combinations of the alignments may be considered. Modified versions of these alternatives which address technical considerations, respond to concerns from the public or reduce community impacts may be considered.

The project area is an economically and socially diverse neighborhood. The predominant land use within the project area is residential with a mix of heavy commercial, industrial and warehousing activities. The project area is adjacent to San Francisco Bay, an Essential Fish Habitat Area as designated by the National Oceanic and Atmospheric Administration—Fisheries.

Key environmental issues to be studied include, but are not limited to, air quality, noise, traffic, socioeconomic impacts, business relocations, hazardous materials, biological, water quality, coastal zone, flood plain, wetlands, visual impacts, impacts to open space and cultural resources and construction/encroachment on State and/or Federal lands. Other key issues may arise at the scoping meeting or during the environmental review process. Resources subject to section 106 of the National Historic Preservation Act may be affected. Section 4(f) resources may also be affected.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed, or are known to have an interest in, this proposal.

Two scoping meetings will be held on July 8, 2004 at 1 p.m. and 7 p.m. at the Bayview Opera House, 4705 Third Street between Oakdale Avenue and Newcomb Avenue in San Francisco. The purpose of the scoping meetings is to seek input and to collect ideas and concerns regarding (1) the individual project concepts and (2) the environmental studies to be done.

Public meetings and a public hearing will also be held. The draft EIS will be available for public and agency review prior to the public hearing. Public notice will be given as to the exact time and location of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 18, 2004.

Leland W. Dong,

Team Leader—North Region, Federal Highway Administration, Sacramento, California.

[FR Doc. 04–11706 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington County, NE

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed roadway improvement project in Washington County, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Kosola, Realty/Environmental Officer, FHWA, Federal Building, Room 220, 100 Centennial Mall North, Lincoln, NE 68508–3851, (402) 437–5973. Alan Doll, Highway Superintendent, Washington County, P.O. Box 130, Blair, NE 68008 (402–426–6844). Allen Shoemaker, Director of Public Works, City of Blair, 218 South 16th Street, Blair, NE 68008 (402–426–4191).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the City of Blair, Nebraska and Washington County, Nebraska will prepare an Environmental Impact Statement (EIS) to study a bypass route around the City of Blair.

The City of Blair currently experiences traffic congestion, delay and accident problems where State Highway 91 and U.S. Highways 30 and 75 share the alignment. These highways share alignment within the city limits of Blair on the Washington Street corridor from 19th Street to 13th Street. Traffic studies indicate that a bypass route around the south, east and north parts of Blair is needed to reduce the amount of truck traffic through Blair. The bypass is currently planned as a two-lane roadway that could be expanded to four lanes.

Alternatives under consideration include: (1) Taking no action; (2) constructing a bypass that connects U.S. Highway 30 south to U.S. Highway 30 east; (3) constructing a bypass that connects U.S. Highway 30 east to U.S. Highway 75 north; and (4) constructing a bypass that connects the south, east and north areas around the city by connecting U.S. 30 south to U.S. 75 south to U.S. 30 east to U.S. 75 north.

An agency scoping meeting and a public scoping/information meeting are planned. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who are known to be interested in this proposed project. Public input will be sought throughout the project via public meetings to be held in 2004. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given of the time and place of the public meetings and public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided in the caption **FOR FURTHER INFORMATION CONTACT**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48.)

Dated: May 26, 2004.

Edward W. Kosola,

Realty/Environmental Officer, Nebraska Division, Federal Highway Administration, Lincoln, Nebraska.

[FR Doc. 04–12447 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–941–86; INTL–656–87; INTL–704–87]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–941–86; INTL–656–87; and INTL–704–87, Treatment of Shareholders of Certain Passive Foreign Investment Companies (§§ 1.1291–1, 1.1291–2, 1.1291–3, 1.1291–6, and 1.1291–8).

DATES: Written comments should be received on or before August 2, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

OMB Number: 1545–1304.

Regulation Project Number: INTL–941–86; INTL–656–87; and INTL–704–87.

Abstract: This regulation concerns the taxation of shareholders of certain passive foreign investment companies (PFICs) upon payment of distributions by such companies or upon disposition of the stock of such companies. The reporting requirements affect U.S. persons that are direct and indirect shareholders of PFICs. The information is required by the IRS to identify PFICs and their shareholders, administer shareholder elections, verify amounts reported, and track transfers of stock of certain PFICs.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–12448 Filed 6–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 720

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720, Quarterly Federal Excise Tax Return.

DATES: Written comments should be received on or before August 2, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quarterly Federal Excise Tax Return.

OMB Number: 1545–0023.

Form Number: 720.

Abstract: Form 720 is used to report (1) excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, (2) the tax on facilities and services, (3) environmental taxes, (4) luxury tax, and (5) floor stocks taxes. The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally, the data is reported by the IRS to Treasury so that funds may be transferred from the general revenue fund to the appropriate trust funds.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 77 hours, 52 minutes.

Estimated Total Annual Burden Hours: 3,893,888.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–12449 Filed 6–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040NR–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040NR–EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.

DATES: Written comments should be received on or before August 2, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.

OMB Number: 1545–1468.

Form Number: 1040NR–EZ.

Abstract: This form is used by certain nonresident aliens with simple tax situations and with no dependents to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 4 hours, 35 minutes.

Estimated Total Annual Burden Hours: 459,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–12450 Filed 6–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms W–8BEN, W–8ECI, W–8EXP, and W–8IMY

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Form W–8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States, Form W–8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, and Form W–8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

DATES: Written comments should be received on or before August 2, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form W–8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Form W–8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States, Form W–8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, and Form W–8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

OMB Number: 1545–1621.

Form Numbers: W–8BEN, W–8ECI, W–8EXP, and W–8IMY.

Abstract: Form W–8BEN is used for certain types of income to establish that the person is a foreign person, is the beneficial owner of the income for which Form W–8BEN is being provided and, if applicable, to claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty. Form W–8ECI is used to establish that the person is a foreign person, is the beneficial owner of the income for which Form W–8ECI is being provided, and to claim that the income is effectively connected with the conduct of a trade or business within the United States. Form W–8EXP is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation. The form is used by such persons to establish foreign status, to claim that the person is the beneficial owner of the income for which Form W–8EXP is given and, if applicable, to claim a reduced rate of, or exemption from, withholding. Form W–8IMY is provided to a withholding agent or payer by a foreign intermediary, foreign partnership, and certain U.S. branches to make representations regarding the status of beneficial owners or to transmit appropriate documentation to the withholding agent.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: Form W–8BEN–3,000,000; Form W–8ECI–180,000; Form W–8EXP–240; Form W–8IMY–400.

Estimated Time Per Respondent: Form W–8BEN–13 hr., 47 min.; Form W–8ECI–10 hr., 33 min.; Form W–8EXP–18 hr., 28 min.; Form W–8IMY–16 hr., 46 min.

Estimated Total Annual Burden Hours: Form W–8BEN–41,370,000; Form W–8ECI–1,899,000; Form W–8EXP–4,431; Form W–8IMY–6,704.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–12451 Filed 6–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of Application Packages for the 2005 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2005 Tax Counseling for the Elderly (TCE) Program is August 2, 2004.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, SE:W:CAR:SPEC:FO:OA, Building C–7, Room 185. Applications can also be submitted electronically through the IRS E-grants System by logging on to *http://www.egrants.irs.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, SE:W:CAR:SPEC:FO:OA, Building C–7, Room 185, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2005 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in Section 21.006.

Dated: May 10, 2004.

Dianna L. Gunter,

Chief, Oversight and Analysis.

[FR Doc. 04–12343 Filed 6–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0066]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 2, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0066'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request to Employer for Employment Information in Connection with Claim for Disability Benefits, VA Form Letter 29–459.

OMB Control Number: 2900–0066.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–459 is used to request employment information from an employer in

connection with a claim for disability benefits. VA uses the information to establish the insured's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 862 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,167.

Dated: May 19, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12389 Filed 6–1–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0080]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to initiate and document expenditures, claim reimbursement as well as make funeral arrangements and authorize burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 2, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0080'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Claim for Payment of Cost of Unauthorized Medical Services, VA Form 10–583.

b. Funeral Arrangements, VA Form 10–2065.

c. Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, VA Form 10–2511.

d. Authorization and Invoice for Medical and Hospital Services.

OMB Control Number: 2900–0080.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–583 is used by health care providers as a claim for the cost of unauthorized hospital care and by veterans as a claim for reimbursement of such cost.

b. VA Form 10–2065 is completed by clerical staff upon the death of a veteran in a VA medical care facility. It is used primarily in VA medical facilities and serves as an official record of the Funeral Director to which the person making funeral arrangements wishes the remains to be released. It is also used as a control document when VA is requested to arrange for the transportation of the deceased from the place of death to the place of burial, and/or when burial is requested in a National Cemetery.

c. VA Form 10–7078 is used by administrative personnel in VA medical facilities to authorize expenditures from the medical care account and process payment of medical and hospital services provided by other than Federal health providers to VA beneficiaries.

d. VA Form 10–2511 is used by administrative personnel in VA facilities to authorize expenditures from the beneficiary travel account. It is also used to process payment for ambulance or other hired vehicular forms of transportation for eligible veterans to and from VA health care facilities for examination, treatment or care.

Affected Public: Business or other for profit, individuals or households, and not for profit institutions.

Estimated Total Annual Burden: 31,546 hours.

a. VA Form 10–583—17,188.

b. VA Form 10–2065—3,625.

c. VA Form 10–2511—2,333.

d. VA Form 10–7078—8,400.

Estimated Average Burden Per Respondent:

a. VA Form 10–583—15 minutes.

b. VA Form 10–2065—5 minutes.

c. VA Form 10–2511—2 minutes.

d. VA Form 10–7078—2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 434,250.

a. VA Form 10–583—68,750 respondents.

b. VA Form 10–2065—43,500 respondents.

c. VA Form 10–2511—70,000 respondents.

d. VA Form 10–7078—252,000 respondents.

Dated: May 19, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12390 Filed 6–1–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 69, No. 106

Wednesday, June 2, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Correction

In notice document 04–10610 appearing on page 26174 in the issue of Tuesday, May 11, 2004, make the following correction:

On page 26174, in the first column, after the third full paragraph, in the third line, ''*Closed:* June 2, 2004, 8:30 a.m. to 4:20 p.m.'' should read ''*Open:* June 2, 2004, 8:30 a.m. to 4:20 p.m.''.

[FR Doc. C4–10610 Filed 6–1–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 2, 2004

Part II

Department of Homeland Security

Customs and Border Protection
Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers; Notice

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of intent to distribute offset for fiscal year 2004.

SUMMARY: Pursuant to the Continued Dumping and Subsidy Offset Act of 2000, this document is U.S. Customs and Border Protection's notice of intention to distribute assessed antidumping or countervailing duties (known as the continued dumping and subsidy offset) for Fiscal Year 2004 in connection with antidumping duty orders or findings or countervailing duty orders. This document sets forth the list of individual antidumping duty orders or findings and countervailing duty orders, together with the affected domestic producers associated with each order or finding who are potentially eligible to receive a distribution. This document also provides the instructions for affected domestic producers to file written certifications to claim a distribution in relation to the listed orders or findings.

DATES: Written certifications to obtain a continued dumping and subsidy offset under a particular order or finding must be received by August 2, 2004.

ADDRESSES: Written certifications and any other correspondence should be addressed to the Assistant Commissioner, Office of Finance, U.S. Customs and Border Protection, National Finance Center, Attention: Sarah Buelo, P.O. Box 68940, Indianapolis, IN, 46268. Any delivery by an express or courier service requiring a street address may be addressed to 6026 Lakeside Blvd., Indianapolis, IN, 46278.

FOR FURTHER INFORMATION CONTACT: For questions regarding certifications, contact Sarah Buelo, National Finance Center, (317) 614–4462. For questions regarding legal aspects, contact L. LaToya Burley, Office of Regulations and Rulings, (202) 572–8793.

SUPPLEMENTARY INFORMATION:

Background

The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (''Act''). The provisions of the CDSOA are contained in title X (sections 1001–1003) of the Act.

The CDSOA, in section 1003 of the Act, amended title VII of the Tariff Act of 1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921 must be distributed to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an order or finding. The term ''affected domestic producer'' means any manufacturer, producer, farmer, rancher or worker representative (including associations of such persons) that:

(A) was a petitioner or interested party in support of a petition with respect to which an antidumping order, a finding under the Antidumping Act of 1921, or a countervailing duty order has been entered, and

(B) remains in operation.

The distribution that these parties may receive is known as the continued dumping and subsidy offset.

List of Orders or Findings and Affected Domestic Producers

It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to U.S. Customs and Border Protection (CBP) a list of the affected domestic producers that are potentially eligible to receive an offset in connection with an order or finding.

To this end, it is noted that the USITC has supplied CBP with the list of individual antidumping and countervailing duty cases, and the affected domestic producers associated with each case that are potentially eligible to receive an offset. This list appears at the end of this document.

CBP Regulations Implementing the CDSOA

It is noted that CBP published a final rule in the **Federal Register** (66 FR 48546) on September 21, 2001, as T.D. 01–68, which was effective as of that date, in order to implement the CDSOA. The final rule added a new subpart F to part 159 of the CBP Regulations (19 CFR part 159, subpart F (§§ 159.61—159.64)).

Notice of Intent To Distribute Offset

This document announces that CBP intends to distribute to affected domestic producers the assessed antidumping or countervailing duties that are available for distribution in Fiscal Year 2004 in connection with those antidumping duty orders or findings or countervailing duty orders that are listed in this document. Section 159.62(a), CBP Regulations (19 CFR 159.62(a)), provides that CBP will publish such a notice of intention to distribute assessed duties at least 90 days before the end of a fiscal year.

Certifications; Submission and Content

To obtain a distribution of the offset under a given order or finding, an affected domestic producer must submit a certification to CBP indicating that the producer desires to receive a distribution.

As required by § 159.62(b), CBP Regulations (19 CFR 159.62(b)), this notice provides the case name and number of the order or finding concerned, as well as the specific instructions for filing a certification under § 159.63 to claim a distribution. Section 159.62(b) also provides that the dollar amounts subject to distribution that were contained in the Special Account for each listed order or finding would appear in this notice. However, these dollar amounts were not available in time for inclusion in this publication. The preliminary amounts will be posted on the CBP Web site (*http://www.cbp.gov*), for purposes of enabling affected domestic producers to determine whether it would be worthwhile to file a certification in a given case. The final amounts available for disbursement may be higher or lower than the preliminary amounts.

A successor to a company appearing on the list of affected domestic producers in this notice, or a member company of an association that appears on the list of affected domestic producers in this notice where the member company does not appear on the list, should consult §§ 159.61(b)(1)(i) or 159.61(b)(1)(ii), CBP Regulations (19 CFR 159.61(b)(1)(i) or 159.61(b)(1)(ii)) and see the note that appears at the end of this document regarding *Candle Corporation of America.*

Specifically, to obtain a distribution of the offset under a given order or finding, each affected domestic producer must timely submit a certification containing the required information detailed below as to the eligibility of the producer to receive the requested distribution and the total amount of the distribution that the producer is claiming. Certifications should be submitted to the Assistant Commissioner, Office of Finance, National Finance Center. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding and it must demonstrate that the domestic producer

is eligible to receive a distribution as an affected domestic producer.

As provided in § 159.63(a), CBP Regulations (19 CFR 159.63(a)), certifications to obtain a distribution of an offset must be received by CBP no later than 60 days after the date of publication of the notice of intent in the **Federal Register**. A list of all certifications received will be published on the CBP Web site shortly after the receipt deadline. This publication will not confirm acceptance or validity of the certification, but merely receipt of the certification.

While there is no established format for a certification, the certification must contain the following information:

1. The date of this **Federal Register** notice;
2. The Commerce case number;
3. The case name (product/country);
4. The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);
5. The address of the domestic producer (if a post office box, the secondary street address must also appear) including, if applicable, a specific room number or department;
6. The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;
7. The specific business organization of the domestic producer (corporation, partnership, sole proprietorship);
8. The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (e-mail) address(es) for the person(s);
9. The total dollar amount claimed;
10. The dollar amount claimed by category, as described in the section below entitled ''Amount Claimed for Distribution'';
11. A statement of eligibility, as described in the section below entitled ''Eligibility to Receive Distribution''; and
12. A signature by a corporate officer legally authorized to bind the producer.

Qualifying Expenditures Which May Be Claimed for Distribution

Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties encompass those expenditures that are incurred after the issuance of an antidumping duty order or finding or a countervailing duty order, and prior to its termination, provided that such expenditures fall within any of the following categories: (1) Manufacturing facilities; (2) Equipment; (3) Research and development; (4) Personnel training; (5) Acquisition of technology; (6) Health care benefits for employees paid for by the employer; (7) Pension benefits for employees paid for by the employer; (8) Environmental equipment, training, or technology; (9) Acquisition of raw materials and other inputs; and (10) Working capital or other funds needed to maintain production.

Amount Claimed for Distribution

In calculating the amount of the distribution being claimed as an offset, the certification must indicate: (1) The total amount of any qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category; (2) The total amount of those expenditures which have been the subject of any prior distribution under 19 U.S.C. 1675c; and (3) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in item ''(1)'' above minus the total amount that was the subject of any prior distribution as noted in item ''(2)'' above). In accordance with 19 CFR 159.63(b)(2)(i)—(b)(2)(iii), CBP will deduct the amount of any prior distribution from the producer's claimed amount for that case. Total amounts disbursed by CBP under the CDSOA for Fiscal Year 2001, 2002 and 2003 are available on the CBP website.

Additionally, under 19 CFR 159.61(c), these qualifying expenditures must be related to the production of the same product that is the subject of the order or finding, with the exception of expenses incurred by associations which must relate to a specific case.

Eligibility To Receive Distribution

As noted, the certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer. Also, the domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (19 CFR 159.63(b)(3)(i)).

Furthermore, under § 159.63(b)(3)(ii), CBP Regulations (19 CFR 159.63(b)(3)(ii), where a party is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

Moreover, as required by 19 U.S.C. 1675c(b)(1) and § 159.63(b)(3)(iii), CBP Regulations (19 CFR 159.63(b)(3)(iii)), the statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought. If a domestic producer is no longer in operation, or no longer produces the product covered by the order or finding, the producer will not be considered an affected domestic producer entitled to receive a distribution.

In addition, as required by 19 U.S.C. 1675c(b)(5) and § 159.63(b)(3)(iii), CBP Regulations (19 CFR 159.63(b)(3)(iii), the domestic producer must state whether it has been acquired by a company or business that is related to a company that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought. If a domestic producer has been so acquired, the producer will not be considered an affected domestic producer entitled to receive a distribution.

The certification must be executed and dated by a party legally authorized to bind the domestic producer and it must state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed (see section below entitled ''Verification of Certification'').

Review and Correction of Certification

A certification that is submitted in response to this notice of distribution may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for qualifying expenditures, including the amount claimed for distribution, appear to be correct. A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer as provided in § 159.63(c), CBP Regulations (19 CFR 159.63(c)). It is the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution

requested. Failure to ensure that the certification is correct, complete and satisfactory will result in the domestic producer not receiving a distribution.

Verification of Certification

Certifications are subject to CBP's verification. Therefore, parties are required to maintain records supporting their claims for a period of five years after the filing of the certification (see § 159.63(d), CBP Regulations (19 CFR 159.63(d))). The records must be those that are normally kept in the ordinary course of business. The records must support each qualifying expenditure enumerated in the certification and they must support how the qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

Disclosure of Information in Certifications; Acceptance by Producer

The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that CBP actually disburses to that company as an offset, will be available for disclosure to the public, as specified in § 159.63(e), CBP Regulations (19 CFR 159.63(e)). To this extent, the submission of the certification is construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in CBP's rejection of the certification.

List of Orders or Findings and Related Domestic Producers

The list of individual antidumping duty orders or findings and countervailing duty orders is set forth below, together with the affected domestic producers associated with each order or finding that are potentially eligible to receive an offset.

Note Regarding *Candle Corporation of America and Blyth, Inc.* v. *United States*

On April 8, 2003, the U.S. Court of International Trade (CIT) issued a decision concerning a successor company claim for a distribution under the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), 19 U.S.C. 1675c. *Candle Corporation of America and Blyth, Inc.* v. *United States,* No. 02–00751 Slip Op. 03–40 (Ct. Int'l Trade Apr. 8, 2003), *appeal docketed,* No. 03–1348 (Fed. Cir. April 28, 2003). The CIT found that the Candle Corporation of America (CCA) response to a 1986 ITC questionnaire ''clearly indicates that CCA did not support the petition.'' Slip Op at 13. The CIT reasoned that, although 19 CFR 159.61(b)(1)(i) permits a ''successor company'' to file a certification to claim an offset on behalf of its predecessor, the ''eligibility for certification under the regulation is subject to the limitations imposed by 19 U.S.C. 1675c, which requires that a claimant (1) have [petitioned] or supported the petition, and (2) remain in operation.'' Consequently, the CIT held that it was not arbitrary, capricious, an abuse of discretion or otherwise contrary to law for CBP to deny CCA's claim.

An appeal to the Federal Circuit has been filed. A final decision may affect future distributions. Assuming an appeal remains pending, CBP may withhold future distributions to affected companies.

Dated: May 25, 2004.

Jo Cohen,

Acting Assistant Commissioner, Office of Finance.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–588–028	AA1921–111	Roller chain/Japan	American Chain Association. Acme Chain Division, North American Rockwell. Atlas Chain & Precision Products. Diamond Chain. Link-Belt Chain Division, FMC. Morse Chain Division, Borg Warner. Rex Chainbelt.
A–401–040	AA1921–114	Stainless steel plate/Sweden	Jessop Steel.
A–588–041	AA1921–115	Synthetic methionine/Japan	Monsanto.
A–588–046	AA1921–129	Polychloroprene rubber/Japan	E.I. du Pont de Nemours.
A–122–047	AA1921–127	Elemental sulphur/Canada.	Duval.
A–588–056	AA1921–162	Melamine/Japan	Melamine Chemical.
A–475–059	AA1921–167	Pressure-sensitive plastic tape/Italy	Minnesota Mining & Manufacturing.
A–588–068	AA1921–188	Prestressed concrete steel wire strand/Japan	American Spring Wire. Armco Steel. Bethlehem Steel. CF&I Steel. Florida Wire & Cable. No petition at the Commission; Commerce service list identifies: U.S. Beet Sugar Association. Florida Sugar Marketing and Terminal Association. American Sugar Cane League. American Sugarbeet Growers Association. Florida Sugar Cane League. Rio Grande Valley Sugar Growers Association. Michigan Sugar. Amstar Sugar.
C–408–046	104–TAA–7	Sugar/EU	Sugar Cane Growers Cooperative of Florida. Alexander & Baldwin. Michigan Farm Bureau. H&R Brokerage. Talisman Sugar. American Farm Bureau Federation. Leach Farms. A.J. Yates.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Hawaiian Agricultural Research Center.
			United States Beet Sugar Association.
			United States Cane Sugar Refiners' Association.
A–423–077	AA1921–198	Sugar/Belgium	Florida Sugar Marketing and Terminal Association.
A–427–078	AA1921–199	Sugar/France	Florida Sugar Marketing and Terminal Association.
A–428–082	AA1921–200	Sugar/Germany	Florida Sugar Marketing and Terminal Association.
A–122–085	731–TA–3	Sugar and syrups/Canada	Amstar Sugar.
A–427–098	731–TA–25	Anhydrous sodium metasilicate/France	PQ.
A–427–001	731–TA–44	Sorbitol/France	Lonza.
			Pfizer.
A–570–007	731–TA–149	Barium chloride/China	Chemical Products.
A–570–101	731–TA–101	Greige polyester cotton printcloth/China	Alice Manufacturing.
			Clinton Mills.
			Dan River.
			Greenwood Mills.
			Hamrick Mills.
			M. Lowenstein.
			Mayfair Mills.
			Mount Vernon Mills.
C–357–004	701–TA–A	Carbon steel wire rod/Argentina	Atlantic Steel.
			Continental Steel.
			Georgetown Steel.
			North Star Steel.
			Raritan River Steel.
A–357–007	731–TA–157	Carbon steel wire rod/Argentina	Atlantic Steel.
			Continental Steel.
			Georgetown Steel.
			North Star Steel.
			Raritan River Steel.
A–469–007	731–TA–126	Potassium permanganate/Spain	Carus Chemical.
A–570–001	731–TA–125	Potassium permanganate/China	Carus Chemical.
A–570–002	731–TA–130	Chloropicrin/China	LCP Chemicals & Plastics.
			Niklor Chemical.
C–533–063	303–TA–13	Iron metal castings/India	Campbell Foundry.
			Le Baron Foundry.
			Municipal Castings.
			Neenah Foundry.
			Pinkerton Foundry.
			U.S. Foundry & Manufacturing.
			Vulcan Foundry.
A–122–503	731–TA–263	Iron construction castings/Canada	Alhambra Foundry.
			Allegheny Foundry.
			Bingham & Taylor.
			Campbell Foundry.
			Charlotte Pipe & Foundry.
			Deeter Foundry.
			East Jordan Foundry.
			Le Baron Foundry.
			Municipal Castings.
			Neenah Foundry.
			Opelika Foundry.
			Pinkerton Foundry.
			Tyler Pipe.
			U.S. Foundry & Manufacturing.
			Vulcan Foundry.
A–351–503	731–TA–262	Iron construction castings/Brazil	Alhambra Foundry.
			Allegheny Foundry.
			Bingham & Taylor.
			Campbell Foundry.
			Charlotte Pipe & Foundry.
			Deeter Foundry.
			East Jordan Foundry.
			Le Baron Foundry.
			Municipal Castings.
			Neenah Foundry.
			Opelika Foundry.
			Pinkerton Foundry.
			Tyler Pipe.
			U.S. Foundry & Manufacturing.
			Vulcan Foundry.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–570–502	731–TA–265	Iron construction castings/China	Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry. Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. U.S. Foundry & Manufacturing. Vulcan Foundry. Alhambra Foundry. Allegheny Foundry. Bingham & Taylor. Campbell Foundry. Charlotte Pipe & Foundry. Deeter Foundry. East Jordan Foundry.
C–351–504	701–TA–249	Heavy iron construction castings/Brazil	Le Baron Foundry. Municipal Castings. Neenah Foundry. Opelika Foundry. Pinkerton Foundry. Tyler Pipe. U.S. Foundry & Manufacturing. Vulcan Foundry.
A–351–605	731–TA–326	Frozen concentrated orange juice/Brazil	Alcoma Packing. B&W Canning. Berry Citrus Products. Caulkins Indiantown Citrus. Citrus Belle. Citrus World. Florida Citrus Mutual.
A–570–825	731–TA–653	Sebacic acid/China	Union Camp.
C–122–404	701–TA–224	Live swine/Canada	National Pork Producers Council. Wilson Foods.
A–357–405	731–TA–208	Barbed wire and barbless wire strand/Argentina	CF&I Steel. Davis Walker. Forbes Steel & Wire. Oklahoma Steel Wire.
A–570–501	731–TA–244	Natural bristle paint brushes/China	Baltimore Brush. Bestt Liebco. Elder & Jenks. EZ Paintr. H&G Industries. Joseph Lieberman & Sons. Purdy. Rubberset. Thomas Paint Applicators. Wooster Brush.
A–570–003	731–TA–103	Cotton shop towels/China	Milliken. Texel Industries. Wikit.
C–535–001	701–TA–202	Cotton shop towels/Pakistan	Milliken.
C–333–401	701–TA–E	Cotton shop towels/Peru	No case at the Commission; Commerce service list identifies: Durafab. Kleen-Tex Industries. Pavis & Harcourt. Lewis Eckert Robb. Milliken.
A–538–802	731–TA–514	Cotton shop towels/Bangladesh	Milliken.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–570–504	731–TA–282	Petroleum wax candles/China	The A..I. Root Company. Candle Artisans, Inc. Candle-Lite. Cathedral Candle. Colonial Candle of Cape Cod. General Wax & Candle. Lenox Candles. Lumi-Lite Candle. Meuch-Kreuzer Candle. National Candle Association. Will & Baumer. WNS.
A–588–045	AA1921–124	Steel wire rope/Japan	AMSTED Industries.
A–201–806	731–TA–547	Carbon steel wire rope/Mexico	Bridon American. Macwhyte. Paulsen Wire Rope. The Rochester Corporation. Williamsport. Wire-rope Works. Wire Rope Corporation of America. United Automobile, Aerospace and Agricultural Implement Workers (Local 960).
A–580–811	731–TA–546	Carbon steel wire rope/Korea	Bridon American. Macwhyte Paulsen Wire Rope The Rochester Corporation Williamsport Wire-rope Works Wire Rope Corporation of America United Automobile, Aerospace and Agricultural Implement Workers (Local 960).
A–351–505	731–TA–278	Malleable cast iron pipe fittings/Brazil	Stanley G. Flagg. Grinnell. Stockham Valves & Fittings. U–Brand. Ward Manufacturing.
A–580–507	731–TA–279	Malleable cast iron pipe fittings/Korea	Stanley G. Flagg. Grinnell. Stockham Valves & Fittings. U–Brand. Ward Manufacturing.
A–583–507	731–TA–280	Malleable cast iron pipe fittings/Taiwan	Stanley G. Flagg. Grinnell. Stockham Valves & Fittings. U–Brand. Ward Manufacturing.
A–588–605	731-TA–347	Malleable cast iron pipe fittings/ Japan	Stanley G. Flagg. Grinnell. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A–549–601	731-TA–348	Malleable cast iron pipe fittings/ Thailand	Stanley G. Flagg. Grinnell. Stockham Valves & Fittings. U-Brand. Ward Manufacturing.
A–570–506	731-TA–298	Porcelain-on-steel cooking ware/ China	General Housewares.
A–201–504	731-TA–297	Porcelain-on-steel cooking ware/ Mexico	General Housewares.
A–583–508	731-TA–299	Porcelain-on-steel cooking ware/ Taiwan	General Housewares.
C–201–505	701-TA–265	Porcelain-on-steel cooking ware/ Mexico	General Housewares.
A–580–601	731-TA–304	Top-of-the-stove stainless steel cooking ware/Korea	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C–580–602	701-TA–267	Top-of-the-stove stainless steel cooking ware/Korea	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
A–583–603	731-TA–305	Top-of-the-stove stainless steel cooking ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–583–604	701-TA–268	Top-of-the-stove stainless steel cooking ware/Taiwan.	Farberware. Regal Ware. Revere Copper & Brass. WearEver/Proctor Silex.
C–351–604	701-TA–269	Brass sheet and strip/Brazil	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–351–603	731-TA–311	Brass sheet and strip/Brazil	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–122–601	731-TA–312	Brass sheet and strip/Canada	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–580–603	731-TA–315	Brass sheet and strip/Korea	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–427–602	731-TA–313	Brass sheet and strip/France	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–427–603	701-TA–270	Brass sheet and strip/France	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–428–602	731–TA–317	Brass sheet and strip/Germany	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–475–601	731–TA–314	Brass sheet and strip/Italy	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–401–601	731–TA–316	Brass sheet and strip/Sweden	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. Olin. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–588–704	731–TA–379	Brass sheet and strip/Japan	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–421–701	731–TA–380	Brass sheet and strip/Netherlands	American Brass. Bridgeport Brass. Chase Brass & Copper. Hussey Copper. The Miller Company. North Coast Brass & Copper. Olin. Pegg Metals. Revere Copper Products. Allied Industrial Workers of America. International Association of Machinists & Aerospace Workers. Mechanics Educational Society of America (Local 56). United Steelworkers of America.
A–831–801	731–TA–340–A	Solid urea/Armenia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–822–801	731–TA–340–B	Solid urea/Belarus	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–447–801	731–TA–340–C	Solid urea/Estonia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–451–801	731–TA–340–D	Solid urea/Lithuania	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–485–601	731–TA–339	Solid urea/Romania	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–821–801	731–TA–340–E	Solid urea/Russia	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–842–801	731–TA–340–F	Solid urea/Tajikistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–843–801	731–TA–340–G	Solid urea/Turkmenistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–823–801	731–TA–340–H	Solid urea/Ukraine	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
A–844–801	731–TA–340–I	Solid urea/Uzbekistan	Agrico Chemical. American Cyanamid. CF Industries. First Mississippi. Mississippi Chemical. Terra International. W.R. Grace.
C–508–605	701–TA–286	Industrial phosphoric acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A–423–602	731–TA–365	Industrial phosphoric acid/Belgium	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A–489–602	731–TA–364	Aspirin/Turkey	Dow Chemical. Monsanto. Norwich-Eaton.
A–122–605	731–TA–367	Color picture tubes/Canada	Philips Electronic Components Group. Zenith Electronics. Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. United Steelworkers of America.
A–588–609	731–TA–368	Color picture tubes/Japan	Philips Electronic Components Group. Zenith Electronics. Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. United Steelworkers of America.
A–580–605	731–TA–369	Color picture tubes/Korea	Philips Electronic Components Group. Zenith Electronics. Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. United Steelworkers of America.
A–559–601	731–TA–370	Color picture tubes/Singapore	Philips Electronic Components Group. Zenith Electronics. Industrial Union Department, AFL-CIO. International Association of Machinists & Aerospace Workers. International Brotherhood of Electrical Workers. International Union of Electronic, Electrical, Technical, Salaried and Machine Workers. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–588–054	AA1921–143	Tapered roller bearings 4 inches and under/Japan	No companies identified as petitioners at the Commission; Commerce service list identifies: Mitsubishi. Nissan Motor. Yamaha Motors. NSK. Hoover-NSK Bearing. ITOCHU International. Toyota Motor Sales. Timken. Nippon Seiko. Kawasaki Heavy Duty Industries. Komatsu America. Nachi Western. Ford Motor. Federal Mogul. Itocho. Kanematsu-Goshu USA. Nissan Motor USA. Nachi America. Motorambar. Honda. General Motors. Sumitomo. Koyo Seiko. American Honda Motor. Subaru of America. Suzuki Motor. Kubota Tractor. Isuzu. Nachi-Fujikoshi. NTN.
A–570–601	731–TA–344	Tapered roller bearings/China	L&S Bearing. Timken. Torrington.
A–437–601	731–TA–341	Tapered roller bearings/Hungary	L&S Bearing. Timken. Torrington.
A–485–602	731–TA–345	Tapered roller bearings/Romania	L&S Bearing. Timken. Torrington.
A–588–604	731–TA–343	Tapered roller bearings over 4 inches/Japan	L&S Bearing. Timken. Torrington.
A–427–801	731–TA–392–A	Ball bearings/France	Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rollway Bearings. Torrington.
A–427–801	731–TA–392–B	Cylindrical roller bearings/France	Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–427–801	731–TA–392–C	Spherical plain bearings/France	Emerson Power Transmission. McGill Manufacturing Co. Rollway Bearings. Torrington.
A–428–801	731–TA–391–A	Ball bearings/Germany	Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rollway Bearings. Torrington.
A–428–801	731–TA–391–B	Cylindrical roller bearings/Germany	Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–428–801	731–TA–391–C	Spherical plain bearings/Germany	Emerson Power Transmission. Rollway Bearings. Torrington.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–475–801	731–TA–393–A	Ball bearings/Italy	Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rollway Bearings. Torrington.
A–475–801	731–TA–393–B	Cylindrical roller bearings/Italy	Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–588–804	731–TA–394–A	Ball bearings/Japan	Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rollway Bearings. Torrington.
A–588–804	731–TA–394–B	Cylindrical roller bearings/Japan	Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–588–804	731–TA–394–C	Spherical plain bearings/Japan	Emerson Power Transmission. Rollway Bearings. Torrington.
A–485–801	731–TA–395	Ball bearings/Romania	Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–559–801	731–TA–396	Ball bearings/Singapore	Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rollway Bearings. Torrington.
A–401–801	731–TA–397–A	Ball bearings/Sweden	Emerson Power Transmission. Kubar Bearings. MPB. Rollway Bearings. Torrington.
A–401–801	731–TA–397–B	Cylindrical roller bearings/Sweden	Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–412–801	731–TA–399–A	Ball bearings/United Kingdom	Emerson Power Transmission. Kubar Bearings. McGill Manufacturing Co. MPB. Rollway Bearings. Torrington.
A–412–801	731–TA–399–B	Cylindrical roller bearings/United Kingdom	Emerson Power Transmission. MPB. Rollway Bearings. Torrington.
A–588–703	731–TA–377	Internal combustion industrial forklift trucks/Japan	Hyster. Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama Facilities. Allied Industrial Workers of America. Independent Lift Truck Builders Union. International Association of Machinists & Aerospace Workers. United Shop & Service Employees.
A–588–706	731–TA–384	Nitrile rubber/Japan	Uniroyal Chemical.
A–583–008	731–TA–132	Small diameter carbon steel pipe and tube/Taiwan	Allied Tube & Conduit. American Tube. Bull Moose Tube. Copperweld Tubing. J&L Steel. Kaiser Steel. Merchant Metals. Pittsburgh Tube. Southwestern Pipe. Western Tube & Conduit.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–489–502	701–TA–253	Welded carbon steel pipe and tube/Turkey	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A–549–502	731–TA–252	Welded carbon steel pipe and tube/Thailand	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A–533–502	731–TA–271	Welded carbon steel pipe and tube/India	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–489–501	731–TA–273	Welded carbon steel pipe and tube/Turkey	Allied Tube & Conduit. American Tube. Bernard Epps. Bock Industries. Bull Moose Tube. Central Steel Tube. Century Tube. Copperweld Tubing. Cyclops. Hughes Steel & Tube. Kaiser Steel. Laclede Steel. Maruichi American. Maverick Tube. Merchant Metals. Phoenix Steel. Pittsburgh Tube. Quanex. Sharon Tube. Southwestern Pipe. UNR-Leavitt. Welded Tube. Western Tube & Conduit. Wheatland Tube.
A–122–506	731–TA–276	Oil country tubular goods/Canada	CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. U.S. Steel.
A–583–505	731–TA–277	Oil country tubular goods/Taiwan	CF&I Steel. Copperweld Tubing. Cyclops. KPC. Lone Star Steel. LTV Steel. Maverick Tube. Quanex. U.S. Steel.
A–559–502	731–TA–296	Small diameter standard and rectangular pipe and tube/Singapore.	Allied Tube & Conduit. American Tube. Bull Moose Tube. Cyclops. Hannibal Industries. Laclede Steel. Pittsburgh Tube. Sharon Tube. Western Tube & Conduit. Wheatland Tube.
A–583–803	731–TA–410	Light-walled rectangular tube/Taiwan	Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.
A–357–802	731–TA–409	Light-walled rectangular tube/Argentina	Bull Moose Tube. Hannibal Industries. Harris Tube. Maruichi American. Searing Industries. Southwestern Pipe. Western Tube & Conduit.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–351–809	731–TA–532	Circular welded nonalloy steel pipe/Brazil	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–580–809	731–TA–533	Circular welded nonalloy steel pipe/Korea	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–201–805	731–TA–534	Circular welded nonalloy steel pipe/Mexico	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–583–814	731–TA–536	Circular welded nonalloy steel pipe/Taiwan	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–307–805	731–TA–537	Circular welded nonalloy steel pipe/Venezuela	Allied Tube & Conduit. American Tube. Bull Moose Tube. Century Tube. CSI Tubular Products. Cyclops. Laclede Steel. LTV Tubular Products. Maruichi American. Sharon Tube. USX. Western Tube & Conduit. Wheatland Tube.
A–588–707	731–TA–386	Granular polytetrafluoroethylene/Japan	E.I. du Pont de Nemours. ICI Americas.
A–475–703	731–TA–385	Granular polytetrafluoroethylene/Italy	E.I. du Pont de Nemours. ICI Americas.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–351–602	731–TA–308	Carbon steel butt-weld pipe fittings/Brazil	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–583–605	731–TA–310	Carbon steel butt-weld pipe fittings/Taiwan	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–588–602	731–TA–309	Carbon steel butt-weld pipe fittings/Japan	Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America. Weldbend.
A–570–814	731–TA–520	Carbon steel butt-weld pipe fittings/China	Hackney. Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America.
A–549–807	731–TA–521	Carbon steel butt-weld pipe fittings/Thailand	Hackney. Ladish. Mills Iron Works. Steel Forgings. Tube Forgings of America.
A–484–801	731–TA–406	Electrolytic manganese dioxide/Greece	Chemetals. Kerr-McGee. Rayovac.
A–588–806	731–TA–408	Electrolytic manganese dioxide/Japan	Chemetals. Kerr-McGee. Rayovac.
A–428–802	731–TA–419	Industrial belts/Germany	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–475–802	731–TA–413	Industrial belts/Italy	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–588–807	731–TA–414	Industrial belts/Japan	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–559–802	731–TA–415	Industrial belts/Singapore	The Gates Rubber Company. The Goodyear Tire and Rubber Company.
A–427–009	731–TA–96	Industrial nitrocellulose/France	Hercules.
A–351–804	731–TA–439	Industrial nitrocellulose/Brazil	Hercules.
A–570–802	731–TA–441	Industrial nitrocellulose/China	Hercules.
A–428–803	731–TA–444	Industrial nitrocellulose/Germany	Hercules.
A–588–812	731–TA–440	Industrial nitrocellulose/Japan	Hercules.
A–580–805	731–TA–442	Industrial nitrocellulose/Korea	Hercules.
A–412–803	731–TA–443	Industrial nitrocellulose/United Kingdom	Hercules.
A–479–801	731–TA–445	Industrial nitrocellulose/Yugoslavia	Hercules.
A–122–804	731–TA–422	Steel rails/Canada	Bethlehem Steel. CF&I Steel.
C–122–805	701–TA–297	Steel rails/Canada	Bethlehem Steel. CF&I Steel.
A–588–811	731–TA–432	Drafting machines/Japan	Vemco.
A–588–810	731–TA–429	Mechanical transfer presses/Japan	Allied Products. United Autoworkers of America. United Steelworkers of America.
A–570–803	731–TA–457–A	Axes and adzes/China	Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–B	Bars and wedges/China	Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–C	Hammers and sledges/China	Warwood Tool. Woodings-Verona.
A–570–803	731–TA–457–D	Picks and mattocks/China	Warwood Tool. Woodings-Verona.
A–570–805	731–TA–466	Sodium thiosulfate/China	Calabrian.
A–428–807	731–TA–465	Sodium thiosulfate/Germany	Calabrian.
A–412–805	731–TA–468	Sodium thiosulfate/United Kingdom	Calabrian.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–469–004	701–TA–178	Stainless steel wire rod/Spain	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Colt Industries. Cyclops. Guterl Special Steel. Joslyn Stainless Steels. Republic Steel.
A–533–808	731–TA–638	Stainless steel wire rod/India	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–351–819	731–TA–636	Stainless steel wire rod/Brazil	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–427–811	731–TA–637	Stainless steel wire rod/France	AL Tech Specialty Steel. Armco Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–580–810	731–TA–540	Welded ASTM A–312 stainless steel pipe/Korea	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America.
A–583–815	731–TA–541	Welded ASTM A–312 stainless steel pipe/Taiwan	Avesta Sandvik Tube. Bristol Metals. Crucible Materials. Damascus Tubular Products. United Steelworkers of America.
A–403–801	731–TA–454	Fresh and chilled Atlantic salmon/Norway	Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
C–403–802	701–TA–302	Fresh and chilled Atlantic salmon/Norway	Heritage Salmon. The Coalition for Fair Atlantic Salmon Trade.
A–580–807	731–TA–459	Polyethylene terephthalate film/Korea	E.I. du Pont de Nemours. Hoechst Celanese. ICI Americas.
A–570–804	731–TA–464	Sparklers/China	B.J. Alan. Diamond Sparkler. Elkton Sparkler.
A–588–702	731–TA–376	Stainless steel butt-weld pipe fittings/Japan	Flowline. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–580–813	731–TA–563	Stainless steel butt-weld pipe fittings/Korea	Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–583–816	731–TA–564	Stainless steel butt-weld pipe fittings/Taiwan	Gerlin. Markovitz Enterprises. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–201–802	731–TA–451	Gray portland cement and clinker/Mexico	Alamo Cement. Blue Circle. BoxCrow Cement. Calaveras Cement. Capitol Aggregates. Centex Cement. Florida Crushed Stone. Gifford-Hill. Hanson Permanente Cement. Ideal Basic Industries.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			National Cement Company of Alabama. National Cement Company of California. Phoenix Cement. Riverside Cement. Southdown. Tarmac America. Texas Industries. Independent Workers of North America (Locals 49, 52, 89, 192, and 471). International Union of Operating Engineers (Local 12).
A–588–815	731–TA–461	Gray portland cement and clinker/Japan	Calaveras Cement. Hanson Permanente Cement. National Cement Co., Inc. National Cement Company of California. Southdown. Independent Workers of North America (Locals 49, 52, 89, 192, and 471). International Union of Operating Engineers (Local 12).
A–307–803	731–TA–519	Gray portland cement and clinker/Venezuela	Florida Crushed Stone. Southdown. Tarmac America.
C–307–804	303–TA–21	Gray portland cement and clinker/Venezuela	Florida Crushed Stone. Southdown. Tarmac America.
A–588–817	731–TA–469	Electroluminescent flat-panel displays/Japan	The Cherry Corporation. Electro Plasma. Magnascreen. OIS Optical Imaging Systems. Photonics Technology. Planar Systems. Plasmaco.
A–570–808	731–TA–474	Chrome-plated lug nuts/China	Consolidated International Automotive. Key Manufacturing. McGard.
A–583–810	731–TA–475	Chrome-plated lug nuts/Taiwan	Consolidated International Automotive Key Manufacturing. McGard.
A–122–814	731–TA–528	Pure magnesium/Canada	Magnesium Corporation of America.
C–122–815	701–TA–309–A	Alloy magnesium/Canada	Magnesium Corporation of America.
C–122–815	701–TA–309–B	Pure magnesium/Canada	Magnesium Corporation of America.
A–557–805	731–TA–527	Extruded rubber thread/Malaysia	Globe Manufacturing. North American Rubber Thread.
A–843–802	731–TA–539	Uranium/Kazakhstan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources. Oil, Chemical and Atomic Workers.
A–821–802	731–TA–539–C	Uranium/Russia	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources. Oil, Chemical and Atomic Workers.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–844–802	731–TA–539–F	Uranium/Uzbekistan	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources. Oil, Chemical and Atomic Workers.
A–823–802	731–TA–539–E	Uranium/Ukraine	Ferret Exploration. First Holding. Geomex Minerals. IMC Fertilizer. Malapai Resources. Pathfinder Mines. Power Resources. Rio Algom Mining. Solution Mining. Total Minerals. Umetco Minerals. Uranium Resources. Oil, Chemical and Atomic Workers.
A–583–080	AA1921–197	Carbon steel plate/Taiwan	No petition (self-initiated by Treasury); Commerce service list identifies: U.S. Steel. China Steel. Bethlehem Steel.
C–423–806	701–TA–319	Cut-to-length carbon steel plate/Belgium	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
C–351–818	701–TA–320	Cut-to-length carbon steel plate/Brazil	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
C–428–817	701–TA–322	Cut-to-length carbon steel plate/Germany	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–201–810	701–TA–325	Cut-to-length carbon steel plate/Mexico	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
C–469–804	701–TA–326	Cut-to-length carbon steel plate/Spain	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
C–401–804	701–TA–327	Cut-to-length carbon steel plate/Sweden	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
C–412–815	701–TA–328	Cut-to-length carbon steel plate/United Kingdom	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–423–805	731–TA–573	Cut-to-length carbon steel plate/Belgium	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–351–817	731–TA–574	Cut-to-length carbon steel plate/Brazil	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–122–823	731–TA–575	Cut-to-length carbon steel plate/Canada	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–405–802	731–TA–576	Cut-to-length carbon steel plate/Finland	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America
A–428–816	731–TA–578	Cut-to-length carbon steel plate/Germany	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–201–809	731–TA–582	Cut-to-length carbon steel plate/Mexico	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–455–802	731–TA–583	Cut-to-length carbon steel plate/Poland	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–485–803	731–TA–584	Cut-to-length carbon steel plate/Romania	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–469–803	731–TA–585	Cut-to-length carbon steel plate/Spain	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–401–805	731-TA–586	Cut-to-length carbon steel plate/Sweden	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
A–412–814	731–TA–587	Cut-to-length carbon steel plate/United Kingdom	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. Lukens Steel. National Steel. Nextech. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. United Steelworkers of America.
C–401–401	701–TA–231	Cold-rolled carbon steel flat products/Sweden	Bethlehem Steel. Chaparral. U.S. Steel.
C–428–817	701–TA–340	Cold-rolled carbon steel flat products/Germany	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–580–818	701–TA–342	Cold-rolled carbon steel flat products/Korea	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–428–814	731–TA–604	Cold-rolled carbon steel flat products/Germany	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–580–815	731–TA–607	Cold-rolled carbon steel flat products/Korea	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–421–804	731–TA–608	Cold-rolled carbon steel flat products/Netherlands	Armco Steel. Bethlehem Steel. California Steel Industries. Gulf States Steel. Inland Steel Industries. LTV Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
C–427–810	701–TA–348	Corrosion-resistant carbon steel flat products/France	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
C–428–817	701–TA–349	Corrosion-resistant carbon steel flat products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
C–580–818	701–TA–350	Corrosion-resistant carbon steel flat products/Korea	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–602–803	731–TA–612	Corrosion-resistant carbon steel flat products/Australia.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–122–822	731–TA–614	Corrosion-resistant carbon steel flat products/Canada.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–427–808	731–TA–615	Corrosion-resistant carbon steel flat products/France	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–428–815	731–TA–616	Corrosion-resistant carbon steel flat products/Germany.	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–588–826	731–TA–617	Corrosion-resistant carbon steel flat products/Japan	Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Lukens Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–580–816	731–TA–618	Corrosion-resistant carbon steel flat products/Korea	Armco Steel. Bethlehem Steel. California Steel Industries. Geneva Steel. Gulf States Steel. Inland Steel Industries. LTV Steel. Lukens Steel. National Steel. Nextech. Rouge Steel Co. Sharon Steel. Theis Precision Steel. Thompson Steel. U.S. Steel. WCI Steel. Weirton Steel. United Steelworkers of America.
A–570–815	731–TA–538	Sulfanilic acid/China	R–M Industries.
A–533–806	731–TA–561	Sulfanilic acid/India	R–M Industries.
C–533–807	701–TA–318	Sulfanilic acid/India	R–M Industries.
A–570–806	731–TA–472	Silicon metal/China	American Alloys. Elkem Metals. Globe Metallurgical. Silicon Metaltech. SiMETCO. SKW Alloys. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538, and 12646).
A–351–806	731–TA–471	Silicon metal/Brazil	American Alloys Globe Metallurgical. Silicon Metaltech. SiMETCO. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538, and 12646).
A–357–804	731–TA–470	Silicon metal/Argentina	American Alloys. Elkem Metals. Globe Metallurgical. Silicon Metaltech. SiMETCO. SKW Alloys. International Union of Electronics, Electrical, Machine and Furniture Workers (Local 693). Oil, Chemical and Atomic Workers (Local 389). Textile Processors, Service Trades, Health Care Professional and Technical Employees (Local 60). United Steelworkers of America (Locals 5171, 8538, and 12646).
A–570–819	731–TA–567	Ferrosilicon/China	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech. Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–843–804	731–TA–566	Ferrosilicon/Kazakhstan	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–823–804	731–TA–569	Ferrosilicon/Ukraine	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech. Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
C–307–808	303–TA–23	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech. Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–821–804	731–TA–568	Ferrosilicon/Russia	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech. Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–307–807	731–TA–570	Ferrosilicon/Venezuela	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech. Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–351–820	731–TA–641	Ferrosilicon/Brazil	AIMCOR. Alabama Silicon. American Alloys. Globe Metallurgical. Silicon Metaltech. Oil, Chemical and Atomic Workers (Local 389). United Autoworkers of America (Local 523). United Steelworkers of America (Locals 2528, 3081, 5171, and 12646).
A–823–805	731–TA–673	Silicomanganese/Ukraine	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–351–824	731–TA–671	Silicomanganese/Brazil	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–570–828	731–TA–672	Silicomanganese/China	Elkem Metals. Oil, Chemical and Atomic Workers (Local 3–639).
A–583–820	731–TA–625	Helical spring lock washers/Taiwan	Illinois Tool Works.
A–570–822	731–TA–624	Helical spring lock washers/China	Illinois Tool Works.
A–533–809	731–TA–639	Forged stainless steel flanges/India	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises.
A–583–821	731–TA–640	Forged stainless steel flanges/Taiwan	Gerlin. Ideal Forging. Maass Flange. Markovitz Enterprises.
A–421–805	731–TA–652	Aramid fiber/Netherlands	E.I. du Pont de Nemours.
C–475–812	701–TA–355	Grain-oriented silicon electrical steel/Italy	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–588–831	731–TA–660	Grain-oriented silicon electrical steel/Japan	Allegheny Ludlum. Armco Steel. United Steelworkers of America.
A–475–811	731–TA–659	Grain-oriented silicon electrical steel/Italy	Allegheny Ludlum. Armco Steel. Butler Armco Independent Union. United Steelworkers of America. Zanesville Armco Independent Union.
A–570–831	731–TA–683	Fresh garlic/China	A&D Christopher Ranch. Belridge Packing. Colusa Produce. Denice & Filice Packing. El Camino Packing. The Garlic Company. Vessey and Company.
A–570–826	731–TA–663	Paper clips/China	ACCO USA. Labelon/Noesting. TRICO Manufacturing.
A–570–827	731–TA–669	Cased pencils/China	Blackfeet Indian Writing Instrument. Dixon-Ticonderoga. Empire Berol. Faber-Castell. General Pencil. J.R. Moon Pencil. Musgrave Pen & Pencil. Panda. Writing Instrument Manufacturers Association, Pencil Section.
A–570–830	731–TA–677	Coumarin/China	Rhone-Poulenc.
A–351–825	731–TA–678	Stainless steel bar/Brazil	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–533–810	731–TA–679	Stainless steel bar/India	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–588–833	731–TA–681	Stainless steel bar/Japan	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–469–805	731–TA–682	Stainless steel bar/Spain	AL Tech Specialty Steel. Carpenter Technology. Crucible Specialty Metals. Electralloy. Republic Engineered Steels. Slater Steels. Talley Metals Technology. United Steelworkers of America.
A–570–836	731–TA–718	Glycine/China	Chattem. Hampshire Chemical.
A–570–832	731–TA–696	Pure magnesium/China	Dow Chemical. Magnesium Corporation of America. International Union of Operating Engineers (Local 564). United Steelworkers of America (Local 8319).
A–570–835	731–TA–703	Furfuryl alcohol/China	QO Chemicals.
A–549–812	731–TA–705	Furfuryl alcohol/Thailand	QO Chemicals.
A–821–807	731–TA–702	Ferrovanadium and nitrided vanadium/Russia	Shieldalloy Metallurgical.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–549–813	731–TA–706	Canned pineapple/Thailand	Maui Pineapple. International Longshoreman's and Warehouseman's Union.
A–357–809	731–TA–707	Seamless pipe/Argentina	Koppel Steel. Quanex. Timken. United States Steel.
A–351–826	731–TA–708	Seamless pipe/Brazil	Koppel Steel. Quanex. Timken. United States Steel.
A–428–820	731–TA–709	Seamless pipe/Germany	Koppel Steel. Quanex. Timken. United States Steel.
A–475–814	731–TA–710	Seamless pipe/Italy	Koppel Steel. Quanex. Timken. United States Steel.
C–475–815	701–TA–362	Seamless pipe/Italy	Koppel Steel. Quanex. Timken. United States Steel.
C–475–817	701–TA–364	Oil country tubular goods/Italy	IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. U.S. Steel. USS/Kobe.
A–357–810	731–TA–711	Oil country tubular goods/Argentina	IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. U.S. Steel. USS/Kobe.
A–475–816	731–TA–713	Oil country tubular goods/Italy	Bellville Tube IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. U.S. Steel. USS/Kobe.
A–588–835	731–TA–714	Oil country tubular goods/Japan	IPSCO. Koppel Steel. Lone Star Steel Co. Maverick Tube. Newport Steel. North Star Steel. U.S. Steel.
A–580–825	731–TA–715	Oil country tubular goods/Korea	Bellville Tube. IPSCO. Koppel Steel. Lone Star Steel. Maverick Tube. Newport Steel. North Star Steel. U.S. Steel. USS/Kobe.
A–201–817	731–TA–716	Oil country tubular goods/Mexico	IPSCO. Koppel Steel. Maverick Tube. Newport Steel. North Star Steel. U.S. Steel. USS/Kobe.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–570–840	731–TA–724	Manganese metal/China	Elkem Metals. Kerr-McGee.
A–570–842	731–TA–726	Polyvinyl alcohol/China	Air Products and Chemicals.
A–588–836	731–TA–727	Polyvinyl alcohol/Japan	Air Products and Chemicals.
A–583–824	731–TA–729	Polyvinyl alcohol/Taiwan	Air Products and Chemicals.
A–588–838	731–TA–739	Clad steel plate/Japan	Lukens Steel.
C–475–819	701–TA–365	Pasta/Italy	A. Zerega's Sons. American Italian Pasta. Borden. D. Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. Pasta USA. Philadelphia Macaroni. S.T. Specialty Foods.
C–489–806	701–TA–366	Pasta/Turkey	A. Zerega's Sons. American Italian Pasta. Borden. D. Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. Pasta USA. Philadelphia Macaroni. S.T. Specialty Foods.
A–475–818	731–TA–734	Pasta/Italy	A. Zerega's Sons. American Italian Pasta. Borden. D. Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. Pasta USA. Philadelphia Macaroni. S.T. Specialty Foods.
A–489–805	731–TA–735	Pasta/Turkey	A. Zerega's Sons. American Italian Pasta. Borden. D. Merlino & Sons. Dakota Growers Pasta. Foulds. Gilster-Mary Lee. Gooch Foods. Hershey Foods. Pasta USA. Philadelphia Macaroni. S.T. Specialty Foods.
A–428–821	731–TA–736	Large newspaper printing presses/Germany	Rockwell Graphics Systems.
A–588–837	731–TA–737	Large newspaper printing presses/Japan	Rockwell Graphics Systems.
A–201–820	731–TA–747	Fresh tomatoes/Mexico	Accomack County Farm Bureau Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers. Florida Farm Bureau Federation. Florida Fruit and Vegetable Association. Florida Tomato Exchange. Florida Tomato Growers Exchange. Gadsden County Tomato Growers Association. South Carolina Tomato Association.
A–588–839	731–TA–740	Sodium azide/Japan	American Azide.
A–570–844	731–TA–741	Melamine institutional dinnerware/China	Carlisle Food Service Products. Lexington United Plastics Manufacturing.
A–560–801	731–TA–742	Melamine institutional dinnerware/Indonesia	Carlisle Food Service Products. Lexington United Plastics Manufacturing.
A–583–825	731–TA–743	Melamine institutional dinnerware/Taiwan	Carlisle Food Service Products. Lexington United Plastics Manufacturing.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–570–846	731–TA–744	Brake rotors/China	Brake Parts. Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers. Kelsey Hayes. Kinetic Parts Manufacturing. Iroquois Tool Systems. Overseas Auto Parts. Wagner Brake.
A–489–807	731–TA–745	Steel concrete reinforcing bar/Turkey	AmeriSteel. Auburn Steel. Birmingham Steel. Commercial Metals. Marion Steel. New Jersey Steel.
A–588–840	731–TA–748	Gas turbo-compressor systems/Japan	Demag Delaval. Dresser-Rand. United Steelworkers of America.
A–570–847	731–TA–749	Persulfates/China	FMC.
A–570–848	731–TA–752	Crawfish tail meat/China	A&S Crawfish. Acadiana Fisherman's Co-op. Arnaudville Seafood. Atchafalaya Crawfish Processors. Basin Crawfish Processors. Bayou Land Seafood. Becnel's Meat & Seafood. Bellard's Poultry & Crawfish. Bonanza Crawfish Farm. Cajun Seafood Distributors. Carl's Seafood. Catahoula Crawfish. Choplin SFD. C.J.'s Seafood & Purged Crawfish. Clearwater Crawfish. Harvey's Seafood. Louisiana Premium Seafoods. Louisiana Seafood. Lawtell Crawfish Processors. Phillips Seafood. Prairie Cajun Wholesale Seafood Dist. Riceland Crawfish. Schexnider. Seafood International Distributors. Sylvester's Processors. Teche Valley Seafood. L.T. West. Crawfish Processors Alliance.
A–588–841	731–TA–750	Vector supercomputers/Japan	Cray Research.
A–570–849	731–TA–753	Cut-to-length carbon steel plate/China	Bethlehem Steel. Geneva Steel. Gulf States Steel. National Steel. U.S. Steel. United Steelworkers of America.
A–821–808	731–TA–754	Cut-to-length carbon steel plate/Russia	Bethlehem Steel. Geneva Steel. Gulf States Steel. National Steel. U.S. Steel. United Steelworkers of America.
A–791–804	731–TA–755	Cut-to-length carbon steel plate/South Africa	Bethlehem Steel. Geneva Steel. Gulf States Steel. National Steel. U.S. Steel. United Steelworkers of America.
A–823–808	731–TA–756	Cut-to-length carbon steel plate/Ukraine	Bethlehem Steel. Geneva Steel. Gulf States Steel. National Steel. U.S. Steel. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–570–850	731–TA–757	Collated roofing nails/China	Illinois Tool Works. International Staple and Machines. Stanley-Bostitch.
A–583–826	731–TA–759	Collated roofing nails/Taiwan	Illinois Tool Works. International Staple and Machines. Stanley-Bostitch.
A–583–827	731–TA–762	SRAMs/Taiwan	Micron Technology.
A–337–803	731–TA–768	Fresh Atlantic salmon/Chile	Atlantic Salmon of Maine. Cooke Aquaculture US. DE Salmon. Global Aqua USA. Island Aquaculture. Maine Coast Nordic. Scan Am Fish Farms. Treats Island Fisheries. Trumpet Island Salmon Farm.
C–475–821	701–TA–373	Stainless steel wire rod/Italy	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–475–820	731–TA–770	Stainless steel wire rod/Italy	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–588–843	731–TA–771	Stainless steel wire rod/Japan	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–580–829	731–TA–772	Stainless steel wire rod/Korea	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–469–807	731–TA–773	Stainless steel wire rod/Spain	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–401–806	731–TA–774	Stainless steel wire rod/Sweden	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–583–828	731–TA–775	Stainless steel wire rod/Taiwan	AL Tech Specialty Steel. Carpenter Technology. Republic Engineered Steels. Talley Metals Technology. United Steelworkers of America.
A–337–804	731–TA–776	Preserved mushrooms/Chile	L.K. Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–570–851	731–TA–777	Preserved mushrooms/China	L.K. Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–533–813	731–TA–778	Preserved mushrooms/India	L.K. Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
A–560–802	731–TA–779	Preserved mushrooms/Indonesia	L.K. Bowman. Modern Mushroom Farms. Monterey Mushrooms. Mount Laurel Canning. Mushroom Canning. Southwood Farms. Sunny Dell Foods. United Canning.
C–423–809	701–TA–376	Stainless steel plate in coils/Belgium	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–475–823	701–TA–377	Stainless steel plate in coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
C–791–806	701–TA–379	Stainless steel plate in coils/South Africa	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–423–808	731–TA–788	Stainless steel plate in coils/Belgium	Allegheny Ludlum. Armco Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–122–830	731–TA–789	Stainless steel plate in coils/Canada	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless.
A–475–822	731–TA–790	Stainless steel plate in coils/Italy	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–580–831	731–TA–791	Stainless steel plate in coils/Korea	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–791–805	731–TA–792	Stainless steel plate in coils/South Africa	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–583–830	731–TA–793	Stainless steel plate in coils/Taiwan	Allegheny Ludlum. Armco Steel. J&L Specialty Steel. Lukens Steel. North American Stainless. United Steelworkers of America.
A–560–803	731–TA–787	Extruded rubber thread/Indonesia	North American Rubber Thread.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–588–846	731–TA–807	Hot-rolled carbon steel flat products/ Japan	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. IPSCO. Ispat/Inland. LTV Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
C–351–829	701–TA–384	Hot-rolled carbon steel flat products/ Brazil	Acme SteelBethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–351–828	731–TA–806	Hot-rolled carbon steel flat products/Brazil	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. IPSCO. Ispat/Inland. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–821–809	731–TA–808	Hot-rolled carbon steel flat products/Russia	Acme Steel. Bethlehem Steel. California Steel Industries. Gallatin Steel. Geneva Steel. Gulf States Steel. IPSCO. Ispat/Inland. LTV Steel. National Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–427–814	731–TA–797	Stainless steel sheet and strip/France	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–428–825	731–TA–798	Stainless steel sheet and strip/Germany	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–475–824	731–TA–799	Stainless steel sheet and strip/Italy	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Tecnology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–588–845	731–TA–800	Stainless steel sheet and strip/Japan	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–580–834	731–TA–801	Stainless steel sheet and strip/Korea	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–201–822	731–TA–802	Stainless steel sheet and strip/Mexico	Allegheny Ludlum. Armco. Bethlehem Steel. Carpenter Technology Corp. J&L Specialty Steel. North American Stainless. United Steelworkers of America.
A–583–831	731–TA–803	Stainless steel sheet and strip/Taiwan	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–412–818	731–TA–804	Stainless steel sheet and strip/United Kingdom	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–427–815	701–TA–380	Stainless steel sheet and strip/France	Allegheny Ludlum. Armco Steel. Bethlehem Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–475–825	701–TA–381	Stainless steel sheet and strip/Italy	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
C–580–835	701–TA–382	Stainless steel sheet and strip/Korea	Allegheny Ludlum. Armco Steel. Bethlehem Steel. J&L Specialty Steel. Butler Armco Independent Union. Carpenter Technology Corp. North American Stainless. United Steelworkers of America. Zanesville Armco Independent Organization.
A–570–852	731–TA–814	Creatine monohydrate/China	Pfanstiehl Laboratories.
C–427–817	701–TA–387	Cut-to-length carbon steel plate/France	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. U.S. Steel. United Steelworkers of America.
C–533–818	701–TA–388	Cut-to-length carbon steel plate/India	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel National Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
C–560–806	701–TA–389	Cut-to-length carbon steel plate/Indonesia	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
C–475–827	701–TA–390	Cut-to-length carbon steel plate/Italy	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. U.S. Steel. United Steelworkers of America.
C–580–837	701–TA–391	Cut-to-length carbon steel plate/Korea	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			National Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
A–427–816	731–TA–816	Cut-to-length carbon steel plate/France	Bethlehem Steel. Geneva Steel. IPSCO Steel. National Steel. U.S. Steel. United Steelworkers of America.
A–533–817	731–TA–817	Cut-to-length carbon steel plate/India	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
A–560–805	731–TA–818	Cut-to-length carbon steel plate/Indonesia	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
A–475–826	731–TA–819	Cut-to-length carbon steel plate/Italy	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. U.S. Steel. United Steelworkers of America.
A–588–847	731–TA–820	Cut-to-length carbon steel plate/Japan	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
A–580–836	731–TA–821	Cut-to-length carbon steel plate/Korea	Bethlehem Steel. Geneva Steel. Gulf States Steel. IPSCO Steel. National Steel. Tuscaloosa Steel. U.S. Steel. United Steelworkers of America.
A–507–502	731–TA–287	Raw in-shell pistachios/Iran	Blackwell Land. California Pistachio Orchard. T.M. Duche Nut. Keenan Farms. Kern Pistachio Hulling & Drying. Los Ranchos de Poco Pedro. Pistachio Producers of California.
C–507–501	None	Raw in-shell pistachios/Iran	Blackwell Land Co. Calif. Pistachio Commission. Calif. Pistachio Orchards. Cal Pure Pistachios, Inc. Keenan Farms, Inc. Kern Pistachio Hulling & Drying Co-op. Los Rancheros de Poco Pedro. Pistachio Producers of Calif. T.M. Duche Nut Co., Inc.
C–507–601	None	Roasted in-shell pistachios/Iran	Calif. Pistachio Commission. Cal Pure Pistachios. Keenan Farms, Inc. Kern Pistachio Hulling & Drying Co-op. Pistachio Producers of Calif. T.M. Duche Nut Co., Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–821–811	731–TA–856	Ammonium nitrate/Russia	Agrium. Air Products and Chemicals. Mississippi Chemical. El Dorado Chemical. Nitram. LaRoche. Wil-Gro Fertilizer.
A–580–839	731–TA–825	Polyester staple fiber/Korea	E.I. du Pont de Nemours. Arteva Specialties S.a.r.l. Wellman. Intercontinental Polymers.
A–583–833	731–TA–826	Polyester staple fiber/Taiwan	Arteva Specialties S.a.r.l. Wellman. Intercontinental Polymers.
A–570–855	731–TA–841	Non-frozen apple juice concentrate/China	Coloma Frozen Foods. Green Valley Apples of California. Knouse Foods Coop. Mason County Fruit Packers Coop. Tree Top.
A–588–852	731–TA–853	Structural steel beams/Japan	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
C–580–842	701–TA–401	Structural steel beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
A–580–841	731–TA–854	Structural steel beams/Korea	Northwestern Steel and Wire. Nucor. Nucor-Yamato Steel. TXI-Chaparral Steel. United Steelworkers of America.
A–570–856	731–TA–851	Synthetic indigo/China	Buffalo Color. United Steelworkers of America.
A–588–850	731–TA–847	Large-diameter carbon steel seamless pipe/Japan	North Star Steel. Timken. U.S. Steel. USS/Kobe. United Steelworkers of America.
A–588–851	731–TA–847	Small-diameter carbon steel seamless pipe/Japan	Koppel Steel. North Star Steel. Sharon Tube. Timken. U.S. Steel. USS/Kobe. Vision Metals' Gulf States Tube. United Steelworkers of America.
A–791–808	731–TA–850	Small-diameter carbon steel seamless pipe/South Africa.	Koppel Steel. North Star Steel. Sharon Tube. Timken. U.S. Steel. USS/Kobe. Vision Metals' Gulf States Tube. United Steelworkers of America.
A–485–805	731–TA–849	Small-diameter carbon steel seamless pipe/Romania	Koppel Steel. North Star Steel. Sharon Tube. Timken. U.S. Steel. USS/Kobe. Vision Metals' Gulf States Tube. United Steelworkers of America.
A–201–827	731–TA–848	Large-diameter carbon steel seamless pipe/Mexico	North Star Steel. Timken. U.S. Steel. USS/Kobe. United Steelworkers of America.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–851–802	731–TA–846	Small-diameter carbon steel seamless pipe/Czech Republic.	Koppel Steel. North Star Steel. Sharon Tube. Timken. U.S. Steel. USS/Kobe. Vision Metals' Gulf States Tube. United Steelworkers of America.
A–570–853	731–TA–828	Aspirin/China.	Rhodia.
A–580–812	731–TA–556	DRAMs of 1 megabit and above/Korea	Micron Technology. NEC Electronics. Texas Instruments.
A–475–828	731–TA–865	Stainless steel butt-weld pipe fittings/Italy	Markovitz Enterprises. Gerlin. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–557–809	731–TA–866	Stainless steel butt-weld pipe fittings/Malaysia	Markovitz Enterprises. Gerlin. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–565–801	731–TA–867	Stainless steel butt-weld pipe fittings/Philippines	Markovitz Enterprises. Gerlin. Shaw Alloy Piping Products. Taylor Forge Stainless.
A–588–856	731–TA–888	Stainless steel angle/Japan	Slater Steels. United Steelworkers of America.
A–580–846	731–TA–889	Stainless steel angle/Korea	Slater Steels. United Steelworkers of America.
A–469–810	731–TA–890	Stainless steel angle/Spain	Slater Steels. United Steelworkers of America.
A–588–015	AA1921–66	Television receivers/Japan	AGIV (USA). Casio Computer. CBM America. Citizen Watch. Funai Electric. Hitachi. Industrial Union Department. Matsushita. Mitsubishi Electric. NEC. Orion Electric. J.C. Penny. Philips Electronics. Philips Magnavox. P.T. Imports. Sanyo. Sharp. Toshiba. Toshiba America Consumer Products. Victor Company of Japan. Montgomery Ward. Zenith Electronics.
A–822–804	731–TA–873	Steel concrete reinforcing bar/Belarus	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc. Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–570–860	731–TA–874	Steel concrete reinforcing bar/China	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–560–811	731–TA–875	Steel concrete reinforcing bar/Indonesia	AmeriSteel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc. Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–580–844	731–TA–877	Steel concrete reinforcing bar/Korea	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc. Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–449–804	731–TA–878	Steel concrete reinforcing bar/Latvia	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc. Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–841–804	731–TA–879	Steel concrete reinforcing bar/Moldova	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc. Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–455–803	731–TA–880	Steel concrete reinforcing bar/Poland	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc. Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–823–809	731–TA–882	Steel concrete reinforcing bar/Ukraine	AmeriSteel. Auburn Steel. Birmingham Steel. Border Steel. CMC Steel Group. Co-Steel, Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Marion Steel. Nucor Steel. North Star Steel Co. Rebar Trade Action Coalition. Riverview Steel. Sheffield Steel.
A–823–810	731–TA–894	Ammonium nitrate/Ukraine	Agrium. Air Products and Chemicals. Committee for Fair Ammonium. Nitrate Trade. El Dorado Chemical. LaRoche Industries. Mississippi Chemicals. Nitram. Prodica.
A–570–862	731–TA–891	Foundry coke/China	ABC Coke. Citizens Gas and Coke Utility. Erie Coke. Sloss Industries Corp. Tonawanda Coke. United Steelworkers of America.
C–357–815	701–TA–404	Hot-rolled steel products/Argentina	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–357–814	731–TA–898	Hot-rolled steel products/Argentina	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–791–809	731–TA–905	Hot-rolled steel products/South Africa	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–580–008	731–TA–134	Color television receivers/Korea	Independent Radionic Workers of America. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine Workers. Industrial Union Department, AFL–CIO. Committee to Preserve American Color television.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–583–009	731–TA–135	Color television receivers/Taiwan	Independent Radionic Workers of America. International Brotherhood of Electrical Workers. International Union of Electrical, Radio and Machine Workers. Industrial Union Department, AFL–CIO. Committee to Preserve American Color Television.
A–122–006	AA1921–49	Steel jacks/Canada	Bloomfield Manufacturing (Harrah). Seaburn Metal Products.
A–588–029	AA1921–85	Fish netting of man-made fiber/Japan	Jovanovich Supply. LFSI. Trans-Pacific Trading.
A–588–038	AA1921–98	Bicycle speedometers/Japan	Avocet. Cat Eye. Diversified Products. N.S. International. Sanyo Electric. Stewart-Warner.
A–588–055	AA1921–154	Acrylic sheet/Japan	Polycast Technology.
C–351–037	104–TAA–21	Cotton Yarn/Brazil	Harriet & Henderson Yarns. LaFar Industries. American Yarn Spinners Association.
A–588–005	731–TA–48	High power microwave amplifiers/Japan	Aydin. MCL.
A–122–401	731–TA–196	Red raspberries/Canada	Rader farms. Ron Roberts. Shuksan Frozen Food. Northwest Food Producers' Association. Oregon Caneberry Commission. Washington Red Raspberry Commission.
A–588–405	731–TA–207	Cellular mobile telephones/Japan	E.F. Johnson. Motorola.
C–421–601	701–TA–278	Fresh cut flowers/Netherlands	Burdette Coward. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery. California Floral Council. Floral Trade Council. Florida Flower Association.
A–301–602	731–TA–329	Fresh cut flowers/Colombia	Burdette Coward. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Pajaro Valley Greenhouses. Topstar Nursery. California Floral Council. Floral Trade Council. Florida Flower Association.
A–331–602	731–TA–331	Fresh cut flowers/Ecuador	Burdette Coward. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery. California Floral Council. Floral Trade Council. Florida Flower Association.
A–201–601	731–TA–333	Fresh cut flowers/Mexico	Burdette Coward. Gold Coast Uanko Nursery. Hollandia Wholesale Florist. Manatee Fruit. Monterey Flower Farms. Topstar Nursery. California Floral Council. Floral Trade Council. Florida Flower Association.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–401–603	731–TA–354	Stainless steel hollow products/Sweden	AL Tech Specialty Steel. Allegheny Ludlum Steel. ARMCO. Carpenter Technology. Crucible Materials. Damacus Tubular Products. Specialty Tubing Group.
A–508–604	731–TA–366	Industrial phosphoric acid/Israel	Albright & Wilson. FMC. Hydrite Chemical. Monsanto. Stauffer Chemical.
A–588–802	731–TA–389	3.5″ microdisks/Japan	Verbatim.
A–588–809	731–TA–426	Small business telephone systems/Japan	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–583–806	731–TA–428	Small business telephone systems/Taiwan	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–580–803	731–TA–427	Small business telephone systems/Korea	American Telephone & Telegraph. Comdial. Eagle Telephonic.
A–570–811	731–TA–497	Tungsten ore concentrates/China	Curtis Tungsten. U.S. Tungsten.
A–427–804	731–TA–553	Hot-rolled lead and bismuth carbon steel products/France.	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
C–427–805	701–TA–315	Hot-rolled lead and bismuth carbon steel products/France.	Bethlehem Steel. Inland Steel Industries. USS/Kobe Steel.
A–588–823	731–TA–571	Professional electric cutting tools/Japan	Black & Decker.
A–821–805	731–TA–697	Pure magnesium/Russia	Dow Chemical. Magnesium Corporation of America. International Union of Operating Engineers. United Steelworkers of America.
C–533–821	701–TA–405	Hot-rolled steel products/India	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
C–560–813	701–TA–406	Hot-rolled steel products/Indonesia	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
C–791–810	701–TA–407	Hot-rolled steel products/South Africa	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
C–549–818	701–TA–408	Hot-rolled steel products/Thailand	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–570–865	731–TA–899	Hot-rolled steel products/China	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–533–820	731–TA–900	Hot-rolled steel products/India	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–560–812	731–TA–901	Hot-rolled steel products/Indonesia	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–834–806	731–TA–902	Hot-rolled steel products/Kazakhstan	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Steel Dymanics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–421–807	731–TA–903	Hot-rolled steel products/Netherlands	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–485–806	731–TA–904	Hot-rolled steel products/Romania	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–583–835	731–TA–906	Hot-rolled steel products/Taiwan	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc.. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–549–817	731–TA–907	Hot-rolled steel products/Thailand	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co. Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–823–811	731–TA–908	Hot-rolled steel products/Ukraine	Bethlehem Steel. Gallatin Steel. IPSCO. LTV Steel. National Steel. Nucor. Rouge Steel Co.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Steel Dynamics. U.S. Steel. WCI Steel Inc. Weirton Steel. Wheeling-Pittsburgh Steel Corp. Independent Steelworkers. United Steelworkers of America.
A–570–864	731–TA–895	Pure magnesium (granular)/China	Concerned Employees of Northwest Alloys. Magnesium Corporation of America. United Steelworkers of America. United Steelworkers of America (Local 8319).
A–588–857	731–TA–919	Welded large diameter line pipe/Japan	American Cast Iron Pipe. Berg Steel Pipe. Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. U.S. Steel.
A–201–828	731–TA–920	Welded large diameter line pipe/Mexico	American Cast Iron Pipe. Berg Steel Pipe. Bethlehem Steel. Napa Pipe/Oregon Steel Mills. Saw Pipes USA. Stupp. U.S. Steel.
C–357–813	701–TA–402	Honey/Argentina	Adee Honey Farms. Althoff Apiaries. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Richard E. Blake. Gene Brand Apiaries. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Mitchell Charles. Charles Apiaries. Collins Honey. Conor Apiaries. Coy's Honey Farm. Delta Bee. Eisele's Pollonation & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L. Emmons, Sr. Gause Honey. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M. Honl. Rand William Honl and Sydney Jo Honl. Jaynes Bee Products. Johnston Honey Farms. Ke-An Honey. Kent Honeybees. Lake-Indianhead Honey Farms. Lamb's Honey FarmLamb's Honey Farm. Laas Flores Apiaries. Mackrill Honey Farms. & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries & Evergreen Honey. Met 2 Honey Farm. A.H. Meyer & Sons. Missouri River Honey. Mitchell Brothers Honey. Monda Honey farm. Montana Dakota Honey. Dave Nelson Apiaries. Northern Bloom Honey. Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Steve E. Parks Apiaries. Peterson's Naturally Sweet Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farms. Bill Rhodes Honey. Robertson Pollination Service. William Robson. Robson Honey. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. James R. & Joan Smith Trust. Smoot Honey. Solby Honey. Stahlman Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott;s Honey. Terry Apiaries. Thompson Apiaries. Triple A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. B. Weaver Apiaries. Wiebersiek Honey Farms. Walter L. Wilson Buzz 76 Apiaries. Wilmer Farms. Brent J. Woodworth. Wooten Golden Queens. Yaddof Apiaries. American Beekeeping Federation. American Honey Products Association. Sioux Honey Association.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–357–812	731-TA–892	Honey/Argentina.	Adee Honey Farms. Althoff Apiaries. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Richard E. Blake. Gene Brandi Apiaries. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Mitchell Charles. Charles Apiaries. Collins Honey. Conor Apiaries. Coy's Honey Farms. Delta Bee. Eisele's Pollination & Honey. Ellingsoa's. Elliott Curtis & Sons. Charles L. Emmons, SR. Gause Honey. Griffith Honey. Haff Apiaries. Hamilton Bee Farms. Hamilton Honey. Happie Bee. Harvest Honey. Harvey's Honey. Hiatt Honey. Hoffman Honey. Hollman Apiaries. Honey House. Honeybee Apiaries. Gary M. Honi. Rand William Honi and Sydney Jo Honi. American Beekeeping Federation. American Honey Producers. Jaynes Bee Products. Larry Johnston. Johnston Honey Farms. Ke-An Honey. Kent Honeybees. Lake Indianhead Honey Farms. Lamb's Honey Farms. Las Flores Apiaries. Mackrill Honey Farms. & Sales. Raymond Marquette. Mason & Sons Honey. McCoy's Sunny South Apiaries. Merrimack Valley Apiaries. & Evergreen Honey. Met 2 Honey Farm. A.H. Meyers & Sons. Missouri River Honey. Mitchell Brothers Honey. Monda Honey Farm. Montana Dakota Honey. Dave Nelson Apiaries. Northern Bloom Honey.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Noye's Apiaries. Oakes Honey. Oakley Honey Farms. Old Mill Apiaries. Opp Honey. Oro Dulce. Steve E. Park Apiaries. Petersons Naturally Sweet Honey. Potoczak Bee Farms. Price Apiaries. Pure Sweet Honey Farm. Bill Rhodes Honey. Robertson Pollination Service. William Robson. Robson Honey. Rosedale Apiaries. Ryan Apiaries. Schmidt Honey Farms. Simpson Apiaries. James R. & Joan Smith Trust Smoot Honey. Solby Honey. Stahlman Apiaries. Stroope Bee & Honey. T&D Honey Bee. Talbott's Honey. Terry Apiaries. Thompson Apiaries. Triple-A Farm. Tropical Blossom Honey. Tubbs Apiaries. Venable Wholesale. B. Weaver Apiaries. Wiebersiek Honey Farms. Walter L. Wilson Buzz 76 Apiaries. Wilmer Farms. Brent J. Woodworth. Wooten's Golden Queens. Yaddof Apiaries. American Beekeeping Federation. American Honey Products Association. Sioux Honey Association.
A–570–863	731–TA–893	Honey/China	Adee Honey Farms. Althoff Apiaries. Anderson Apiaries. Arroyo Apiaries. Artesian Honey Producers. Bailey Enterprises. Barkman Honey. Basler Honey Apiary. Beals Honey. Bears Paw Apiaries. Beaverhead Honey. Bee Biz. Bee Haven Honey. Belliston Brothers Apiaries. Big Sky Honey. Richard E. Blake. Gene Brandi Apiaries. Curt Bronnenbery. Brown's Honey Farms. Brumley's Bees. Buhmann Apiaries. Carys Honey Farms. Chaparrel Honey. Mitchell Charles. Charles Apiaries. Collins Honey. Conor Apiaries. Coy's Honey Farms. Delta Bee. Eisele's Pollination & Honey.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Ellingsoa's.
			Elliott Curtis & Sons.
			Charles L. Emmons, Sr.
			Gause Honey.
			Griffith Honey.
			Haff Apiaries.
			Hamilton Bee Farms.
			Hamilton Honey.
			Happie Bee.
			Harvest Honey.
			Hiatt Honey.
			Hoffman Honey.
			Hollman Apiaries.
			Honey House.
			Honeybee Apiaries.
			Gary M. Honi.
			Rand William Honi and Sydney Jo Honi.
			Jaynes Bee Products.
			Larry Johnston.
			Johnston Honey Farms.
			Ke-An Honey.
			Kent Honeybees.
			Lake Indianhead Honey Farms.
			Lamb's Honey Farms.
			Las Flores Apiaries.
			Mackrill Honey Farms & Sales.
			Raymond Marquette.
			Mason & Sons Honey.
			McCoy's Sunny South Apiaries.
			Merrimack Valley Apiaries & Evergreen Honey.
			Met 2 Honey Farm.
			A.H. Meyers & Sons.
			Missouri River Honey.
			Mitchell Brothers Honey.
			Monda Honey Farm.
			Montana Dakota Honey.
			Dave Nelson Apiaries.
			Northern Bloom Honey.
			Noye's Apiaries.
			Oakes Honey.
			Oakley Honey Farms.
			Old Mill Apiaries.
			Opp Honey.
			Oro Dulce.
			Steve E. Park Apiaries.
			Peterson's Naturally Sweet Honey.
			Potoczak Bee Farms.
			Price Apiaries.
			Pure Sweet Honey Farm.
			Bill Rhodes Honey.
			Robertson Pollination Service.
			William Robson.
			Robson Honey.
			Rosedale Apiaries.
			Ryan Apiaries.
			Schmidt Honey Farms.
			Simpson Apiaries.
			James R. & Joann Smith Trust.
			Smoot Honey.
			Solby Honey.
			Stahlman Apiaries.
			Stroope Bee & Honey.
			T&D Honey Bee.
			Talbott's Honey.
			Terry Apiaries.
			Thompson Apiaries.
			Triple-A Farm.
			Tropical Blossom Honey.
			Tubbs Apiaries.
			Venable Wholesale.
			B. Weaver Apiaries.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Wiebersiek Honey Farms. Walter L. Wilson Buzz 76 Apiaries. Wilmer Farms. Brent J. Woodworth. Wooten's Golden Queens. Yaddof Apiaries. American Beekeeping Federation. American Honey Producers Association. Sioux Honey Association.
A–122–838	731–TA–928	Softwood lumber/Canada	71 Lumber Co. Almond Bros. Lbr. Co. Anthony Timberlands. Balfour Lbr. Co. Ball Lumber. Banks Lumber Company. Barge Forest Products Co. Beadles Lumber Co. Buddy Bean Lumber. Bearden Lumber. Guy Bennett Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co. Inc. Blue Mountain Lumber. Burgin Lumber Co. Burt Lumber Company. C&D Lumber Co. C.M. Yucker Lumber Corp. Ceda-Pine Veneer. Cersosimo Lumber Co., Inc. Charles Ingram Lumber Co. Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Clearwater Forest Industries. CLW, Inc. Cody Lumber Co. Collins Pine Co. Collums Lumber. Columbus Lumber Co. Contoocook River Lumber. Cornwright Lumber Co. Daniels Lumber Inc. Dean Lumber Co., Inc. Deltic Lumber Corp. Devils Tower Forest Products. DiPrizio Pine Sales. Dorchester Lumber Co. East Brainerd Lumber Co. East Coast Lumber Company. Eas-Tex Lumber. ECK Wood Products. Ellingson Lumber Co. Elliott Sawmilling. Empire Lumber Co. Evergreen Forest Products. Excalibur Shelving Systems Inc. Exley Lumber Co. F.H. Stoltze Land & Lumber Co. F.L. Turlington Lbr. Co. Inc. Fleming Lumber. Flippo Lumber. Floragen Forest Products. Frank Lumber Co. Franklin Lumber Co. Fremont Sawmill. Frontier Resources. Garrison Brothers Lumber Co. Georgia Lumber.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Gilman Building Products. Godfrey Lumber. Granite State Forest Prod. Inc. Great Western Lumber Co. Greenville Molding Inc. Griffin Lumber Company. Guess Brothers Lumber. Conway Guiteau Lumber. Gulf Lumber. Gulf States Paper. Ralph Hamel Forest Products. H.G. Toler & Son Lumber Co. H.G. Wood Industries, LLC. H.S. Hofler & Sons Lumber Co. Inc. H.W. Culp Lumber Co. Hampton Resources. Hancock Lumber. Hankins Inc. Hankins Lumber Co. Harrigan Lumber. Harwood Products. Haskell Lumber Inc. Hatfield Lumber. Hedstrom Lumber. Herrick Millwork Inc. Hogan & Storey Wood Products. Hogan Lumber Co. Hood Industries. Claude Howard Lumber. Hubbard Forest Ind. Inc. Idaho Veneer Co. Industrial Wood Products. Intermountain Res. LLC. International Paper. D.R. Johnson Lumber. J. Franklin Jones Lumber Co., Inc. J.D. Martin Lumber Co. J.E. Jones Lumber Co. J.H. Knighton Lumber Co. J.P. Haynes Lbr. Co. Inc. J.W. Jones Lumber. Jack Batte & Sons, Inc. Jasper Lumber Company. Johnson Lumber Company. Jordan Lumber & Supply. Joseph Timber Co. Keadle Lumber Enterprises. Keller Lumber. King Lumber Co. Konkolville Lumber. Langdale Forest Products. Laurel Lumber Company. Leavitt Lumber Co. Leesville Lumber Co. Limington Lumber Co. Longview Fibre Co. Lovell Lumber Co. Inc. M. Kendall Lumber Co. M.B. Heath & Sons Lumber Co. M.C. Dixon Lumber Co. Manke Lumber Co. Marriner Lumber Co. Mason Lumber. Mebane Lumber Co. Inc. Randy D. Miller Lumber. Millry Mill Co. Inc. Moose Creek Lumber Co. Moose River Lumber.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Morgan Lumber Co. Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens & Hurst Lumber. Packaging Corp. of America. Page & Hill Forest Products. Parker Lumber. Pate Lumber Co. Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant Western Lumber Inc. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant Western Lumber, Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber, Inc. Pruitt Lumber Inc. R. Leon Williams Lumber Co. Rajala Timber Co. Rappahannock Lumber Co. Regulus Stud Mills, Inc. Riley Creek Lumber. Robbins Lumber. Roanoke Lumber Co. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. Seacoats Mills, Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. Sierra Pacific Industries. Sigfrisson Wood Products. Silver City Lumber Inc. Somers Lbr. & Mfg. Inc. South & Jones. South Coast. Southern Forest Industries, Inc. Southern Lumber. St. Laurent Forest Products. Steely Lumber Co. Inc. Stimson Lumber. S.I. Story Lumber. Summit Timber Co.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Sundance Lumber. Superior Lumber. Swanson Superior Forest Products. Swift Lumber. T.R Miller Mill Co. Tamarack Mill. Taylor Lumber & Treating Inc. Fred Tebb & Sons. Temple-Inland Forest Products. Thompson River Products. Three Rivers Timber. Thrift Brothers Lumber Co. Inc. Timco Inc. Tolleson Lumber. Toney Lumber. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. V.P. Kiser Co. Viking Lumber Co. Jerry G. Williams & Sons. W.M. Shepherd Lumber Co. W.R. Robinson Lumber Co. Inc. Walton Lumber Co. Inc. Warm Springs Forest Products. Wilkens, Kaiser & Olsen, Inc. Wrenn Brothers Inc. Wyoming Sawmills. Yakama Forest Products. R.A. Yancey Lumber. Younce & Ralph Lumber Co. Inc. Zip-O-Log Mills Inc. Coalition for Fair Lumber Imports Executive Committee. Paper, Allied-Industrial, Chemical and Energy Workers International Union. United Brotherhood of Carpenters and Joiners.
C–122–839	701–TA–414	Softwood lumber/Canada	71 Lumber Co. Almond Bros. Lbr. Co. Anthony Timberlands. Balfour Lbr. Co. Ball Lumber. Banks Lumber Co. Barge Forest Products Co. Beadles Lumber Co. Buddy Bean Lumber. Bearden Lumber. Guy Bennett Lumber. Bennett Lumber. Big Valley Band Mill. Bighorn Lumber Co. Inc. Blue Mountain Lumber. Burgin Lumber Co. Ltd. Burt Lumber Company. C&D Lumber Co. C.M. Tucker Lumber Corp. Ceda-Pine Veneer. Cersosimo Lumber Co. Inc. Charles Ingram Lumber Co. Inc. Charleston Heart Pine. Chesterfield Lumber. Chips. Chocorua Valley Lumber Co. Clearwater Forest Industries. CLW Inc. Cody Lumber Co. Collins Pine Co.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Collums Lumber.
			Columbus Lumber Co.
			Contoocook River Lumber.
			Cornwright Lumber Co.
			Daniels Lumber Inc.
			Dean Lumber Co. Inc.
			Deltic Timber Corporation.
			Devils Tower Forest Products.
			DiPrizio Pine Sales.
			Dorchester Lumber Co.
			East Brainerd Lumber Co.
			East Coast Lumber Company.
			Eas-Tex Lumber.
			ECK Wood Products.
			Ellingson Lumber Co.
			Elliott Sawmilling.
			Empire Lumber Co.
			Evergreen Forest Products.
			Excaliber Shelving Systems, Inc.
			Exley Lumber Co.
			F.H. Stoltze Land & Lumber Co.
			F.L. Turlington Lbr. Co. Inc.
			F.H. Stoltze Land & Lumber Co.
			F.L. Turlington Lbr. Co. Inc.
			Fleming Lumber.
			Flippo Lumber.
			Floragen Forest Products.
			Frank Lumber Co.
			Franklin Timber Co.
			Fremont Sawmill.
			Frontier Resources.
			Garrison Brothers Lumber Co. & Subsidiaries.
			Georgia Lumber.
			Gilman Building Products.
			Godfrey Lumber.
			Granite State Forest Products Inc.
			Great Western Lumber Co.
			Greenville Molding Inc.
			Griffin Lumber Company.
			Guess Brothers Lumber.
			Conway Guiteau Lumber.
			Gulf Lumber.
			Gulf States Paper.
			Ralph Hamel Forest Products.
			H.G. Toler & Son Lumber Co.
			H.G Wood Industries, LLC.
			H.S. Hofler & Sons Lumber Co. Inc.
			H.W. Culp Lumber Co.
			Hampton Resources.
			Hancock Lumber.
			Hankins Inc.
			Hankins Lumber Co.
			Harrigan Lumber.
			Harwood Products.
			Haskell Lumber Inc.
			Hatfield Lumber.
			Hedstrom Lumber.
			Herrick Millwork Inc.
			Hogan & Storey Wood Prod.
			Hogan Lumber Co.
			Hood Industries.
			Claude Howard Lumber.
			Hubbard Forest Ind. Inc.
			Idaho Veneer Co.
			Industrial Wood Products.
			Intermountain Res. LLC.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			International Paper. D.R Johnson Lumber. J. Franklin Jones Lumber Co. Inc. J.D. Martin Lumber Co. J.E. Jones Lumber Co. J.H. Knighton Lumber Co. J.P. Haynes Lumber Co. Inc. J.W. Jones Lumber. Jack Batte & Sons, Inc. Jasper Lumber Company. Johnson Lumber Company. Jordan Lumber & Supply. Joseph Timber Co. Keadle Lumber Enterprises. Keller Lumber. King Lumber Co. Konkolville Lumber Langdale Forest Products. Laurel Lumber Company. Leavitt Lumber Co. Leesville Lumber Co. Limington Lumber Co. Longview Fibre Co. Lovell Lumber Co. Inc. M. Kendall Lumber Co. M.B. Heath & Sons Lumber Co. M.C. Dixon Lumber Co. Inc. Manke Lumber Co. Marriner Lumber Co. Mason Lumber. Mebane Lumber Co. Inc. Randy D. Miller Lumber. Millry Mill Co. Inc. Moose Creek Lumber Co. Moose River Lumber. Morgan Lumber Co. Inc. Mount Yonah Lumber Co. Nagel Lumber. New Kearsarge Corp. New South. Nicolet Hardwoods. Nieman Sawmills SD. Nieman Sawmills WY. North Florida. Northern Lights Timber & Lumber. Northern Neck Lumber Co. Ochoco Lumber Co. Olon Belcher Lumber Co. Owens & Hurst Lumber. Packaging Corp. of America. Page & Hill Forest Products. Parker Lumber. Pate Lumber Co. Inc. PBS Lumber. Pedigo Lumber Co. Piedmont Hardwood Lumber Co. Pine River Lumber Co. Pinecrest Lumber Co. Pleasant Western Lumber, Inc. Plum Creek Timber. Pollard Lumber. Portac. Potlatch. Potomac Supply. Precision Lumber, Inc. Pruitt Lumber Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			R. Leon Williams Lumber Co. Rajala Timber Co. Rappahannock Lumber Co. Regulus Stud Mills, Inc. Riley Creek Lumber. Robbins Lumber. Roanoke Lumber Co. Robertson Lumber. Roseburg Forest Products Co. Rough & Ready. RSG Forest Products. Rushmore Forest Products. RY Timber Inc. Sam Mabry Lumber Co. Scotch Lumber. Seacoats Mills, Inc. Seago Lumber. Seattle-Snohomish. Seneca Sawmill. Shaver Wood Products. Shearer Lumber Products. Shuqualak Lumber. Sierra Pacific Industries. Sigfrisson Wood Products. Silver City Lumber Inc. Somers Lbr. & Mfg. Inc. South & Jones. South Coast. Southern Forest Industries, Inc. Southern Lumber. St. Laurent Forest Products. Steely Lumber Co. Inc. Stimson Lumber. S.I. Story Lumber. Summit Timber Co. Sundance Lumber. Superior Lumber. Swanson Superior Forest Prod. Inc. Swift Lumber. T.R Miller Mill Co. Tamarack Mill. Swift Lumber. T.R. Miller Mill Co. Tamarack Mill. Taylor Lumber & Treating, Inc. Fred Tebb & Sons. Temple-Inland Forest Products. Thompson River Lumber. Three Rivers Timber. Thrift Brothers Lumber Co. Inc. Timco, Inc. Tolleson Lumber. Toney Lumber. Tradewinds of Virginia Ltd. Travis Lumber Co. Tree Source Industries Inc. Tri-State Lumber. TTT Studs. V.P. Kiser Lumber Co. Viking Lumber Co. Jerry G. Williams & Sons. W.M. Shepherd Lumber Co. W.R. Robinson Lumber Co. Inc. Walton Lumber Co. Inc. Warm Springs Forest Products. Wilkens, Kaiser & Olsen, Inc. Wrenn Brothers, Inc. Wyoming Sawmills. Yakama Forest Products. R.A. Yancey Lumber. Younce & Ralph Lumber Co. Inc. Zip-O-Log Mills, Inc.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
			Coalition for Fair Lumber Imports Executive Committee Paper, Allied-Industrial, Chemical and Energy Workers International Union. United Brotherhood of Carpenters and Joiners.
A–533–823	731–TA–929	Silicomanganese/Canada	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639.
A–834–807	731–TA–930	Silicomanganese/Kazakhstan	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International, Local 5–0639.
A–307–820	731–TA–931	Silicomanganese/Venezuela	Eramet Marietta. Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5–0639.
A–570–868	731–TA–932	Folding metal tables and chairs/China	Krueger International. McCourt Manufacturing. Meco. Virco Manufacturing.
C–533–825	731–TA–415	Polyethylene terephthalate film, sheet and strip (PET film)/India.	DuPont Teijin Films. Mitsubishi Polyester Film, LLC. Toray Plastics (America).
A–533–824	731–TA–933	Polyethylene terephthalate film, sheet, and strip (PET film)/India.	DuPont Teijin Films. Mitsubishi Polyester Film, LLC. Toray Plastics (America).
A–583–837	731–TA–934	Polyethylene terephthalate film, sheet and strip (PET film)/Taiwan.	DuPont Teijin Films. Mitsubishi Polyester Film, LLC. Toray Plastics (America).
A–337–806	731–TA–948	Individually quick frozen red rasberries/Chile	A&A Berry Farms. Bahler Farms. Bear Creek Farms. David Burns. Columbia Farms. Columbia Fruit. George Culp. Dobbins Berry Farm. Enfield. Firestone Packing. Heckel Farms. George Hoffman Farms. Wendell Kreder. Curt Maberry. Maberry Packing. Mike & Jean's. Nguyen Berry Farms. Nick's Acres. North Fork. Parson Berry Farm. Pickin 'N' Pluckin. Postage Stamp Farm. Rader. RainSweet. Scenic Fruit. Silverstar Farms. Tim Straub. Theony Farms. Townsend. Tsugawa Farms. Updike Berry Farms. Van Laeken Farms.
A–570–866	731–TA–921	Folding gift boxes/China	Field Container. Harvard Folding Box. Sterling Packaging. Superior Packaging.
A–427–818	731–TA–909	Low enriched uranium/France	USEC.
C–427–819	701–TA–409	Low enriched uranium/France	USEC.
C–428–829	701–TA–410	Low enriched uranium/Germany	USEC.
C–421–809	701–TA–411	Low enriched uranium/Netherlands	USEC.
C–412–821	701–TA–412	Low enriched uranium/ United Kingdom	USEC.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–427–820	731–TA–913	Stainless steel bar/France	Carpenter Technology. Crucible Specialty Metals. Electralloy Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–428–830	731–TA–914	Stainless steel bar/Germany	Carpenter Technology. Crucible Specialty Metals. Electralloy Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–475–829	731–TA–915	Stainless steel bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–580–847	731–TA–916	Stainless steel bar/Korea	Carpenter Technology. Crucible Specialty Metals. Electralloy Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–412–822	731–TA–918	Stainless steel bar/United Kingdom	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
C–475–830	701–TA–413	Stainless steel bar/Italy	Carpenter Technology. Crucible Specialty Metals. Electralloy. Empire Specialty Steel. Republic Technologies International. Slater Steels. United Steelworkers of America.
A–570–867	731–TA–922	Automotive replacement glass windshields/China	Apogee Enterprises. PPG Industries. Safelite Glass. Visteon Corporation.
A–570–873	731–TA–986	Ferrovanadium/China	Bear Metallurgical Corp. Shieldalloy Metallurgical Corp.
A–791–815	731–TA–987	Ferrovanadium/South Africa	Bear Metallurgical Co. Shieldalloy Mtallurgical Corp.
C–351–833	701–TA–417	Carbon and certain alloy steel wire rod/Brazil	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
C–122–841	701–TA–418	Carbon and certain alloy steel wire rod/Canada	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–351–832	731–TA–953	Carbon and certain alloy steel wire rod/Brazil	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
A–122–840	731–TA–954	Carbon and certain alloy steel wire rod/Canada	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
A–560–815	731–TA–957	Carbon and certain alloy steel wire rod/Indonesia	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
A–201–830	731–TA–958	Carbon and certain alloy steel wire rod/Mexico	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
A–841–805	731–TA–959	Carbon and certain alloy steel wire rod/Moldova	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
A–274–804	731–TA–961	Carbon and certain alloy steel wire rod/Trinidad & Tobago.	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
A–823–812	731–TA–962	Carbon and certain alloy steel wire rod/Ukraine	AmeriSteel. Birmingham Steel. Cascade Steel Rolling Mills. Connecticut Steel Corp. Co-Steel Raritan. GS Industries. Keystone Consolidated Industries. North Star Steel Texas. Republic Technologies International. Rocky Mountain Steel Mills.
C–437–805	701–TA–426	Sulfanilic acid/Hungary	Nation Ford Chemical.
A–437–804	731–TA–426	Sulfanilic acid/Hungary	Nation Ford Chemical.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–471–806	731–TA–427	Sulfanilic acid/Portugal	Nation Ford Chemical.
A–821–817	731–TA–991	Silicon metal/Russia	Globe Metallurgical Inc. SIMCALA, Inc.
A–570–875	731–TA–990	Non-malleable cast iron pipe fittings/China	Anvil International, Inc. Buck Co., Inc. Frazier & Frazier Industries. Ward Manufacturing, Inc.
A–570–877	731–TA–1010	Lawn & garden steel fence posts/China	Steel City Corp.
A–588–861	731–TA–1016	Polyvinyl alcohol/Japan	Celenex Ltd. E. I. DuPont de Nemours & Co.
A–570–878	731–TA–1013	Saccharin/China	PMC Specialties Group., Inc.
A–552–801	731–TA–1012	Certain Frozen Fish Fillets/Viet Nam	America's Catch Inc. Aquafarms Catfish, Inc. Carolina Classics Catfish, Inc. Consolidated Catfish Companies, Inc. Fish Processors, Inc. Guidry's Catfish, Inc. Haring's Pride Catfish. Harvest Select Catfish (Alabama Catfish, Inc.). Heartland Catfish Co. (TT&W Farm Products, Inc.). Prairie Lands Seafood (Illinois Fish Farmers Cooperative). Pride of the Pond. Pride of the South Catfish, Inc. Prime Line, Inc. Seabrook Seafood, Inc. Seacat (Arkansas Catfish Growers). Simmons Farm Raised Catfish, Inc. Southern Pride Catfish, LLC.
C–580–851	701–TA–431	DRAMS and DRAM Modules/Korea	Dominion Semiconductor, LLC/Micron Technology, Inc. Infineon Technologies Richmond, LP. Micron Technology, Inc.
A–570–880	731–TA–1020	Barium Carbonate/China	Chemical Products Corp.
A–570–849	731–TA–753	Cut-to-length Carbon Steel Plate/China	Geneva. Gulf.
A–122–847	731–TA–1019B	Hard Red Spring Wheat/Canada	North Dakota Wheat Commission.
C–122–848	701–TA–430B	Hard Red Spring Wheat/Canada	North Dakota Wheat Commission.
A–570–879	731–TA–1014	Polyvinyl Alcohol/China	Celanese Ltd. E.I. du Pont de Nemours & Co.
A–580–850	731–TA–1017	Polyvinyl Alcohol/Korea	Celanese Ltd. E.I. du Pont de Nemours & Co.
A–570–881	731–TA–1021	Malleable Iron Pipe Fittings/China	Anvil International, Inc. Buck Co., Inc. Ward Manufacturing, Inc.
A–570–882	731–TA–1022	Refined Brown Aluminum Oxide/China	C–E Minerals. Treibacher Schleifmittel North America, Inc. Washington Mills Co., Inc.
A–588–862	731–TA–1023	Certain Ceramic Station Post Insulators/Japan	Lapp Insulator Co., LLC. Newell Porcelain Co., Inc. Victor Insulators, Inc.
C–533–829	701–TA–432	Prestressed Concrete Steel Wire Strand/India	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia, LLC. Strand Tech Martin, Inc. Sumiden Wire Products Corp.
A–351–837	731–TA–1024	Prestressed Concrete Steel Wire Strand/Brazil	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia, LLC. Strand Tech Martin, Inc. Sumiden Wire Products Corp.
A–533–828	731–TA–1025	Prestressed Concrete Steel Wire Strand/India	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia, LLC. Strand Tech Martin, Inc. Sumiden Wire Products Corp.

Commerce case No.	Commission case No.	Product/country	Petitioners/supporters
A–580–852	731–TA–1026	Prestressed Concrete Steel Wire Strand/Korea	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia, LLC. Strand Tech Martin, Inc. Sumiden Wire Products Corp.
A–201–831	731–TA–1027	Prestressed Concrete Steel Wire Strand/Mexico	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia, LLC. Strand Tech Martin, Inc. Sumiden Wire Products Corp.
A–549–820	731–TA–1028	Prestressed Concrete Steel Wire Strand/Thailand	American Spring Wire Corp. Insteel Wire Products Co. Sivaco Georgia, LLC. Strand Tech Martin, Inc. Sumiden Wire Products Corp.
A–588–854	731–TA–860	Tin-mill products/Japan	Weirton Steel. Independent Steelworkers. United Steelworkers of America.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise Certification Regulations for Helicopters; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–2000–7958; Amendment No. 36–25]

RIN 2120–AH10

Noise Certification Regulations for Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending the noise certification regulations for helicopters. These changes are based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and the Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations with the European Joint Aviation Requirements (JAR) for helicopters. These changes will provide nearly uniform noise certification standards for helicopters certificated in the United States, the JAA countries, and other countries that have adopted as their national regulation, either the United States regulations, the JAA regulations, or the International Civil Aviation Organization (ICAO) standards. Harmonizing the noise certification standards will simplify airworthiness approvals for imported and exported helicopters.

DATES: Effective July 2, 2004.

FOR FURTHER INFORMATION CONTACT: Sandy Liu, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4864; facsimile (202) 267–5594; or e-mail at *sandy.liu@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this document. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

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The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

Background

Statement of the Problem

Various governmental bodies have developed noise certification regulations to control noise emissions from helicopters. The International Civil Aviation Organization (ICAO) issues ongoing prototypical sets of aircraft noise standards that its member States, including the United States, are encouraged to adopt into their respective national regulations. Many ICAO member States have adopted the ICAO standards word for word. The United States has adopted noise certification regulations in title 14 of the Code of Federal Regulations (CFR) part 36. Although similar to the ICAO standard, the U.S. regulations contain substantive differences from the ICAO version. A third body, the JAA, is developing its own version of the ICAO standards with JAA member States in Europe. Thus, from a practical standpoint, three sets of helicopter noise certification requirements exist, each controlled by an independent political entity.

Helicopter manufacturers must demonstrate compliance with at least one, and often all three, of the sets of noise certification regulations when a helicopter is exported from its country of manufacture and certification. It became apparent to the manufacturers the differences among the three versions of the helicopter noise standards represent an undesirable burden. The manufacturers requested that the regulating agencies harmonize the three sets of regulations in order to minimize the costs for demonstrating compliance and facilitate international trade.

These three aviation certification authorities, the United States, the JAA, and the ICAO, had previously recognized the value of harmonizing civil aircraft certification and operating regulations. The Administrator of the FAA supports harmonization and has committed the FAA to support harmonizing U.S. regulations with those of the JAA and the ICAO.

Current United States Helicopter Noise Certification Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe ''standards to measure aircraft noise and sonic boom * * * and regulations to control and abate aircraft noise and sonic boom.'' In the United States, noise standards and regulations that apply to issuing type certificates, changes in type design, and airworthiness certificates for specified classes and categories of aircraft are contained in 14 CFR part 36. Subpart H and appendices H and J of part 36 contain the requirements and standards that apply to helicopters. Appendices H and J of part 36 specify the test conditions, procedures, and noise levels required to demonstrate compliance with certification requirements for helicopters. The original helicopter noise certification standards and regulations, including appendix H, were published on February 5, 1988 (53 FR 3534). On September 16, 1992, the FAA published an alternative noise certification procedure, appendix J, for helicopters that do not exceed 6,000 pounds maximum takeoff weight (57 FR 42846).

ICAO Helicopter Noise Certification Standards

The ICAO has adopted a set of Standards and Recommended Practices for aircraft noise certification. These ICAO standards are similar to the U.S. regulations. The ICAO Annex 16 standards, which are not alone enforceable, are intended to be prototypical regulations upon which the Contracting States to ICAO may base their own national regulations. For helicopters, Chapter 8 of Annex 16 is the approximate equivalent of part 36,

appendix H. Chapter 11 of Annex 16 is the approximate ICAO equivalent to part 36, appendix J. The ICAO standards are issued as International Standards and Recommended Practices, Environmental Protection, Annex 16 to the Convention on International Civil Aviation, Volume 1, Aircraft Noise.

Joint Aviation Authorities Helicopter Noise Certification Standards

The civil aviation authorities of certain European countries have agreed to common comprehensive and detailed airworthiness and operating requirements; these are known as the Joint Aviation Regulations, or JARs. One goal of the JARs is to minimize type certification differences on multinational European ventures and to facilitate the export and import of aviation products between European nations. Aviation authorities of participating European countries recognize the JARs as an acceptable basis for showing compliance with their national aviation laws. The JAA added aircraft noise certification (JAR 36), including the helicopter requirements of subsection D, to the JARs effective May 23, 1997. The JAA's JAR 36 study group is tasked with the technical responsibilities for overseeing the noise certification standards.

Aviation Rulemaking Advisory Committee

In June 1990, at a meeting of the JAA Council, which consists of JAA members and the FAA, the FAA Administrator committed the FAA to support harmonizing the U.S. regulations with the JARs.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee (ARAC) to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues facing the agency. The FAA tasked the ARAC with several noise certification issues. These issues involve harmonizing 14 CFR part 36 with JAR 36, harmonizing associated guidance material, and interpretations of the regulations. On May 3, 1994, the FAR/JAR Harmonization Working Group for Helicopters was established (59 FR 22883). The Helicopter Harmonization Working Group (HHWG), as it is known, is comprised of helicopter noise certification experts, and is responsible for addressing tasks assigned by ARAC. The United States and European interests are represented in the HHWG, which includes representatives of the helicopter manufacturers and aviation authority representatives from the FAA and the JAA/ANCAT. The HHWG is co-chaired by industry representatives from the United States and Europe, and meetings are held alternately in the United States and Europe.

The HHWG reviewed the helicopter noise certification provisions of 14 CFR part 36, subparts A and H, and appendices H and J, and the corresponding applicable provisions of JAR 36 and ICAO Annex 16. Differences between the regulations were identified and discussed. The goal of the HHWG is to harmonize the regulations by modifying or deleting conflicting requirements. The HHWG is not authorized to recommend the creation of new requirements or the removal of existing requirements that are common among the different sets of regulations. Methods for resolving the differences were agreed to and forwarded to each regulatory body for approval. A recommendation for amending part 36 was forwarded to the ARAC. After due consideration including a meeting open to the public on August 23, 2000, ARAC agreed to this recommendation and forwarded it to the FAA for consideration in the form of a draft NPRM.

On October 5, 2000, the FAA published Notice No. 00–11 entitled ''Noise Certification Regulations for Helicopters'' (65 FR 59634). On October 16, 2000, a correction document was published (65 FR 61125) correcting the notice number from 00–11 to 00–12. The FAA solicited comments on the proposals, which are discussed below. This final rule is based on Notice No. 00–12.

Discussion of Comments

Two commenters responded to Notice No. 00–12.

Transport Canada reviewed the proposed rule and agrees with its content. Bell Helicopter Textron, Inc. (BHTI) also supports the amendment to harmonize the U.S. regulations with the European JARs.

In its comment, BHTI suggests adopting changes that were recommended by the Helicopter Harmonization Working Group (HHWG). BHTI was a member of the HHWG that identified three items that were expected to be in the NPRM but were inadvertently omitted in the drafting process. These include clarification of test series requirements, the allowable weather data time window, and flight requirements relative to wind direction and minimal wind threshold.

Specifically, BHTI made the following three comments:

1. Section H36.101(c)(7): BHTI requests a change in the allowable timeframe for meteorological temperature and relative humidity measurements to be obtained relative to each noise test measurement. This change would increase the timeframe from 25 minutes to 30 minutes and results in a single international standard.

2. Section H36.107(b)(2): BHTI states that the height tolerances of ±30 ft (±9 meters) are not consistent with the JAR 36 glide slope tolerance limits. BHTI suggests that the FAA adopt the JAR standards. This change would conform to related requirements made in section H36.101(b)(7) and maintains technical consistency.

3. Section J36.105(b): BHTI states the current flyover procedures require at least six flights over the noise measuring station, with an equal number in the opposite direction. BHTI suggests that relative wind effects (head versus tail winds) be accounted for during test series. This change would improve noise repeatability by further balancing directional wind effects over a test series and results in a balanced flight procedure that is the same as JAR 36 requirements.

The FAA agrees with incorporating these harmonization changes in this final rule. These changes were agreed upon by the HHWG and do not change noise stringency, and provide further comprehensive technical uniformity of the noise certification requirements in the U.S. regulations, JAR requirements, and ICAO guidelines.

Corrections and Other Minor Changes to the Proposed Rule

This final rule incorporates the BHTI comments. It also corrects typographical errors, and word omissions that appear in the proposed rule. In addition, we are correcting section and appendix designations, cross-references, symbol designations, equation changes, and terminology that will harmonize the rule more closely. The following is a list of the corrections and changes discussed above.

(1) In section H36.3(d), the symbol ''D'' is changed to ''D_r'' and the symbol ''J'' to ''J_r''; the word ''reference'' is added before the word ''airspeed'' to indicate that the specifications are for reference flight conditions.

(2) In section H36.3(f)(1)(i), the approach reference profile designation is changed from ''EK'' to ''E_rK_r'', and the angle measure is changed from ''6° +/ −0.5 °'' to ''6°.''

(3) In section H36.111(c)(2), the word ''engine'' is deleted.

(4) In section H36.201(a)(1), the word ''Instantaneous'' is deleted to be consistent with the nomenclature and title used in section A36.6.

(5) In sections H36.205(a)(1)(i) and H36.205(a)(ii), the range of correctional variation is changed to show that it can be less than zero.

(6) In section H36.205(c)(1), the text that discusses operational speed is deleted because it is not applicable when describing flight profile criteria.

(7) In section H36.205(e)(2), the range specification for Mach Number is changed from ''0.3'' to ''0.03.''

(8) In section H36.205(f)(1)(i), the equation designations of measured takeoff sound propagation path and length are changed from, ''L_r A'' to ''AL'' in the second sentence and from ''L_r A'' to ''AL_r'' in the third sentence.

(9) In section H36.205(f)(2)(i), the equation designations of takeoff distances for measured and reference paths are changed from ''AM'' to ''AN'' and AM_r'' to ''AN_r''.

(10) In section H36.205(f)(2)(ii), the paragraph reference is changed from (d)(1)(ii) to (f)(1)(ii) to cite the correct procedures.

(11) In section H36.205(f)(4), the flyover distance designations for measured and reference paths are changed from, ''AN'' to ''AM'' and AN_r'' to ''AM_r''.

(12) In sections H36.205(f)(1)(i), (f)(2)(i), (f)(3) and (f)(4), the symbols and units in the equation are corrected to be consistent with the definition of corrected maximum sound pressure level in appendix A to part 36.

(13) In sections H36.205(g)(1)(i) through (iv), the constant value ''-10'' in the first term is changed to ''-7.5'' for each of the Δ_2 equations.

(14) In section H36.205(g)(1)(i), the word ''corrected'' is changed to ''reference'' throughout the section for consistent terminology between measured and reference conditions. The measured and reference length terms are changed from, ''AT'' to ''AL'' and from ''AT_r'' to ''AL_r'', within the Δ_2 equation and paragraph text. Also, the words ''as the corrected and'' are deleted.

(15) In section H36.205(g)(1)(ii), the approach designations of measured and reference lengths are changed from, ''AS'' to ''AN'' and from ''ASr'' to ''AN_r'', within the Δ_2 equation and paragraph text.

(16) In section H36.205(g)(1)(iii), the sideline measured and reference length designations for each of the flight conditions is changed from, ''T'' to ''L'', from ''Tr'' to ''L_r'', from ''S'' to ''M'', from ''S_r'' to ''M_r'', from ''G'' to ''N'', from ''G_r'' to ''N_r'', and from ''K'' to ''S''. The word ''approach'' is changed to ''flyover'' and ''flyover'' is changed to ''approach'' to be consistent with the changed format.

(17) In section H36.205(g)(1)(iv), the measured and reference length terms are changed from ''AG'' to ''AM'' and from ''AG_r'' to ''AM_r'', within the Δ_2 equation and paragraph text.

(18) In section J36.3(c), the term ''power on'' is removed to simplify and more accurately express the operating condition.

Sections H36.205(f) and H36.205(g) are reordered to match the sequence of the flight conditions, and establishes format consistency throughout appendix H. These sections are reordered to follow the flight conditions order of takeoff, flyover, approach, and sideline measures. A related format change is made in section H36.205(f)(3) where the sideline station designations are changed from ''Ln'' to ''L_r'', and from ''Mn'' to ''M_r''. Also, the word ''approach'' is changed to ''flyover'' and ''flyover'' to ''approach'' to be consistent with the changed format.

Synopsis of the Final Rule

Part 36 of 14 CFR contains noise standards for aircraft type and airworthiness certification. Subpart H of part 36, and its related appendices H and J, prescribe noise levels and test procedures used for certifying civil helicopters in the normal, transport, restricted, or primary category. This includes rules governing issuing original, amended, or supplemental type certificates for helicopters for which application is made on or after March 6, 1986.

The FAA is amending some of the technical specifications included in appendices H and J, and adding a new definition of maximum normal operating RPM in § 36.1. This final rule does not substantively alter the prescribed noise limits or change the relative stringency of the regulations, *i.e.*, the relationship between the noise level limits and the measured noise level of a given helicopter. These changes in this final rule can be categorized as (a) replacing an existing specification with a similar ICAO specification; (b) adding an existing ICAO specification to part 36 where a corresponding part 36 specification does not exist; or (c) removing an existing part 36 specification where there is no corresponding ICAO specification. The FAA has chosen to remove those part 36 specifications that are no longer technically appropriate and for which the practice is outdated.

The FAA has examined the part 36 helicopter noise certification process and analyzed how the changes will affect previous helicopter noise certification projects. The cumulative positive and negative effect of the changes on a single certification would not typically exceed ± 0.1 decibels and would not be expected to exceed ± 0.3 decibels under a worst-case combination of conditions. The FAA has determined that the changes will not substantively alter the noise certification levels or the finding of compliance for helicopters currently certificated under appendix H or appendix J.

Section-by-Section Discussion

The following is a section-by-section discussion of the changes proposed in Notice No. 00–12 that are incorporated in this final rule.

Section 36.1 Applicability and Definitions

A new definition for ''maximum normal operating RPM'' is added to § 36.1(h)(5) of the final rule. Maximum normal operating RPM is defined as the highest rotor speed corresponding to the airworthiness limit imposed by the manufacturer and approved by the FAA. This term will cover instances where a tolerance on the highest rotor speed is specified, where the rotor speed is automatically linked to flight condition, or where the rotor speed can be changed by pilot action.

Section 36.11 Acoustical Change: Helicopters and Section 36.801 Noise Measurement

The applicability of appendix J in the final rule is changed. It increases the maximum takeoff weight limit from 6,000 pounds to 7,000 pounds. This change reflects a previous change to 14 CFR part 27 airworthiness standards for normal category rotorcraft. The part 27 revision, published on October 18, 1999, increased the maximum weight limitation for normal category rotorcraft to 7,000 pounds, increased the passenger seat limitation to nine, and updated the safety standards for airworthiness.

Subpart O—Operating Limitations and Information

Subpart O of part 36 specifies requirements for documentation of noise levels in an airplane flight manual or rotorcraft flight manual. This final rule adds the word ''Documentation'' to the subpart title to better identify the subject matter of subpart O.

In § 36.1581(a)(2), the reference to appendix F is changed to appendix G. The noise certification requirement for propeller-driven small airplanes was moved to appendix G in Amendment 36–16 (53 FR 47394, November 22, 1988), and this change was overlooked in the NPRM.

In new § 36.1581(a)(3), the requirement to include helicopter noise levels in the rotorcraft flight manual is added. This change includes noise certification documentation requirements and is similar to requirements for other types of aircraft. This change will provide uniform noise level documentation requirements for each aircraft category and will standardize documentation procedures.

Section H36.3 Reference Test Conditions

Sea level pressure in metric units of hector Pascal (hPa) is added to section H36.3(a)(1) of this final rule. The English units of pounds per square foot (psf) that are specified in the current rule remain in the final rule. The outdated designation for inches of mercury is deleted. This change will prevent possible variations in measured data resulting from differing conversion factors made by applicants using metric units.

The reference to rotor speed in section H36.3(d) is deleted in the final rule. The FAA has determined that it is unnecessary when describing a flight profile, since rotor speed is an operational procedure and not a flight profile description.

Two new criteria for flyover reference airspeeds: $0.9V_{NE}$ and $0.45V_{NE}$+65 knots are added to section H36.3(d) of the final rule. Currently, the reference airspeed required is the lesser of $0.9V_H$ or 0.45_{VH}+65 knots. (**Note:** V_{NE} is the never-exceed airspeed, an airworthiness limitation imposed by the manufacturer and approved by the FAA.) The advent of more powerful engines and improved gearboxes has resulted in helicopters that can have a V_H airspeed in excess of the power-on V_{NE} airspeed. The new noise certification airspeed criteria are needed to keep up with technological advances and still accommodate the airworthiness limitations imposed for safety. The value of V_{NE} is also added to section H36.3(e).

Test approach angle tolerance limits between 5.5° and 6.5° are removed from section H36.3(f)(1)(ii) of the final rule. These limits are added to section H36.3(f)(1)(i). Since section H36.3(f)(1)(ii) defines approach profile requirements and section H36.3(f)(1)(i) defines operating procedures, paragraph (i) is the appropriate place for the tolerance limits.

Section H36.5 Symbols and units

The symbols S_r, T, and T_r and their definitions are removed from in the ''Flight Profile Identification-Positions'' table in section H36.5. The symbols AS, AS_r, AT, and AT_r and their definitions in the Flight Profile Distances table are also removed from section H36.5. Since the closest points of approach are not used for testing, these symbols are no longer addressed on the Figures.

The description for the symbol S is revised and three new symbols and their definitions are added to the Flight Profile Identification Positions table in the final rule. The new symbols and their definitions are as follows:

F_r—Position on reference takeoff path directly above noise measuring Station A.

G_r—Position on reference flyover path directly above noise measuring Station A.

H_r—Position on reference approach path directly above noise measuring Station A.

S.—Sideline noise measuring station (note: a subscript denotes the aircraft orientation relative to the direction of flight). These changes and corrections make these tables consistent with revised Figures H1, H2, and H3.

Section H36.101 Noise Certification Test and Measurement Conditions

The requirement that flyover test conditions be at, or above the maximum certification weight are added to section H36.101(b)(6)(i) of the final rule. Requiring the maximum certification weight limit for at least three flight conditions, eliminates the necessity for requiring separate comprehensive weight test series. In accounting for the maximum noise due to weight effects, it reduces test cost by minimizing the number of flights previously necessary. This change also harmonizes the flight condition weight criteria necessary to be consistent with JAR 36 requirements.

Section H36.101(b)(6)(iii) is deleted. The requirement for additional flight test data to determine the variation of EPNL with weight for the takeoff condition is unnecessary because takeoff noise generation is a function of torque (power) to the rotor systems, not weight.

The requirement for approach test weight in section H36.101(b)(8)(ii) is changed from a ''maximum of 90 percent'' to ''between 90 percent and 105 percent'' of the rotorcraft's maximum certification weight. This change makes this section consistent with section H36.101(b)(6)(ii), and simplifies the weight requirements for the three flight conditions.

Section H36.101(b)(8)(iii) is deleted. The requirement for additional flight test data that is used to determine the variation of EPNL with weight for the approach condition is unnecessary. During approach, noise generation is predominantly a function of complex aeroacoustic sources associated with main rotor blade vortex interaction, not weight. This change will further harmonize measurement procedures and streamline certification testing.

The minimum test temperature in section H36.101(c)(2) is changed from 36°F (2.2°C) to 14°F (−10°C). The current 36°F (2.2°C) temperature limit is unnecessarily restrictive, given that no higher levels of atmospheric absorption could be encountered by lowering the test day temperature. The temperature limit for noise measuring equipment in part 36 is unchanged.

Section H36.101(c)(2) of the final rule specifies that the atmospheric test window be based on the 10-meter temperature values and relative humidity values instead of the average temperature between the aircraft and the 10-meter tower above the ground. The final rule also specifies that the atmospheric test window be used to adjust the sound propagation path for propagation path absorption. Noise certification data collected to date demonstrate that EPNL values corrected using atmospheric data measured at 33 feet (10 meters) are acoustically identical to the previous correction standard. The previous correction standard used both averaged aircraft altitude temperature and relative humidity data, and ground based temperature and relative humidity data. This change makes the part 36 requirements the same as JAR 36 requirements.

Section H36.101(c)(3) of the current rule requires relative humidity and ambient temperature values to be measured at the 10-meter measurement station for allowable sound attenuation in the one-third octave band centered at 8 kHz. The final rule eliminates the requirement that the sound attenuation determination use aircraft measurements. This change is supported by years of noise certification data demonstrating that atmospheric measurements at 33 feet (10 meters) satisfy the sound attenuation determination. Analysis has indicated minimal differences between humidity measured at the helicopter altitude and the 10-meter measurement position. Corrections have been no greater than 0.1 dB, except under extreme conditions that would be considered an anomalous meteorological condition under which a test could not be conducted.

Section H36.101(c)(5) of the final rule expands the testing limitations under anomalous conditions to account for other meteorological factors such as temperature and relative humidity. The current criterion specifies only the

anomalous test condition for wind effects. As an example, the typical desert test environment provides acceptable wind conditions but also develops complex temperature and relative humidity gradients that highly influence and distort noise measurements. Additional limitations on anomalous conditions of meteorological factors to maintain noise repeatability are added in the final rule. FAA-approved procedures are to be used to determine compliance. This change results in harmonizing the testing limitations with that in JAR 36.

As discussed previously in this document, the allowable timeframe for meteorological temperature and relative humidity measurements that must be obtained relative to each noise test measurement in section H36.101(c)(7) is included in the final rule. The timeframe is increased from 25 minutes to 30 minutes and results in a single international standard. This change harmonizes the testing procedures in part 36 with those in JAR 36.

Sections H36.101(d)(2) and (d)(3) currently require that the helicopter height and lateral position be determined relative to the reference flight track, rather than the centerline or runway. The final rule, allows the use of a differential global positioning system (DGPS), as an alternate, acceptable independent method for determining helicopter position.

Section H36.103 Takeoff Test Conditions

Section H36.103(b)(1) of the final rule adds the requirement to establish the takeoff procedure airspeed before entering the 10dB-down time interval of the climb out. The current rule requires only that the takeoff procedure airspeed be established during the horizontal portion of the takeoff test procedure. Adding this requirement clarifies that portion of the takeoff flight profile for which the required airspeed must be maintained. This revised takeoff procedure allows the pilot to establish and stabilize required power settings at the time the climb is started. This procedure simplifies and shortens the pilot's workload by requiring one less parameter (power) that must be adjusted from horizontal flight to the time the climb is initiated. This method is satisfactory only if the initial 10 dB-down time interval occurs during the climb portion of the profile. If this does not occur during the climb portion of the flight, the test run is invalid and must be repeated.

An alternate criterion of maximum takeoff power corresponding to minimum installed engine power is added to section H36.103(b)(3). The current rule only allows for the use of torque limit at the minimum installed power available. The final rule adds the use of maximum takeoff power available as an alternate takeoff test condition. As amended, the lower of the two limits (gearbox torque limit or maximum takeoff power) will be used to satisfy the takeoff condition requirement. This change makes the requirements in part 36 the same as in JAR 36.

The current takeoff airspeed requirement in section H36.103(b)(4) states that either the best rate of climb airspeed, or the lowest airworthiness approved takeoff speed, be maintained during the 10db down time interval. The language used to describe takeoff airspeed requirements has caused confusion between the FARs and the JARs in the past. This final rule harmonizes the language used to explain takeoff airspeed requirements; the requirement has not changed.

A definition of the highest rotor speed used in takeoff is added to section H36.103(b)(5). The current rotor speed criterion specifies normal operating RPM. The term ''normal'' is being removed. The average rotor speed is required to be within ±1.0 percent of maximum normal operating RPM during the 10 dB-down time interval. A complete discussion of this change can be found in the discussion of section 36.1(h)(5) of this preamble.

A new alternate allowable altitude criteria of a wider zenith tolerance, in meters, for low altitudes near the start point of the 10 dB-down time interval is added to section H36.103(b)(6). The current permitted zenith tolerance defined in degrees throughout the 10 dB-down time interval is still allowed. This change harmonizes the part 36 criteria with those used in JAR 36.

A new paragraph (b)(7) is added to section H36.103. This new paragraph requires that a constant takeoff configuration be maintained, and permits the landing gear to be retracted when establishing the best rate-of-climb speed, V_y. Both conditions must be consistent with aircraft airworthiness standards. This change makes the requirements in part 36 the same as the requirements in JAR 36.

Section H36.105 Flyover Test Conditions

Current section H36.105(b) requires that an even number of flights be conducted to assure a balanced measurement of any directional effects related to flight path orientation. As previously discussed in this document, relative wind effects (head versus tail winds) must also be accounted for during test series. After further analysis, the FAA has determined that the suggested change to add the relative wind effects will improve noise repeatability by further balancing directional wind effects over a test series. This final rule incorporates this change because it is a technically sound approach that results in a balanced flight procedure. Adding this requirement harmonizes part 36 with JAR 36 requirements.

The requirement that a constant cruise configuration be maintained is added to section H36.105(b)(1). This change adopts the commonly understood term ''cruise configuration'' to clarify the requirement for steady, controlled-piloting, constant speed operations during flyover test conditions.

Two alternative flyover reference airspeed criteria are added to the current requirement of continuous power (VH) in section H36.105(c)(1). The two alternative level flyover reference airspeeds are 90 percent of the never-exceed airspeed, V_{NE}, and 45 percent of the never-exceed airspeed plus 65 knots. The least of the three airspeeds is required to be used as the reference airspeed. The advent of more powerful engines and improved gearboxes has resulted in helicopters that can have a V_H airspeed in excess of the power-on V_{NE} airspeed. These new noise certification airspeed criteria are needed to keep up with technological advances while accommodating the airworthiness limitations imposed for safety. This addition makes the airspeed criteria in part 36 the same as the criteria in JAR 36.

A definition of the highest rotor speed used in flyover is added to section H36.105(c)(2). The current rotor speed criterion specifies normal operating RPM. The average rotor speed is required to be within ±1.0 percent of maximum normal operating RPM during the 10 dB-down time interval. This change is being made for the same reasons previously discussed for section 36.1(h)(5) of this final rule.

Section H36.107 Approach Test Conditions

As previously discussed in this document, the height tolerance of ±30 ft (±9 meters) in current section H36.107(b)(2) is not consistent with the JAR 36 glide slope tolerance limits. The height tolerance in section H36.107(b)(2) is changed to ±33 ft (±10 meters) in order to be accurate and consistent with the 6° ±0.5 ° glide slope requirement of section H36.101(b)(7). This change conforms to related requirements made in section

H36.101(b)(7) and maintains technical consistency.

A new fixed-distance-lateral-tolerance at low altitudes is added to section H36.107(b)(3). This new tolerance adds flexibility to operations conducted near the end of the approach test condition. The current vertical ground convergent zenith tolerance was overly strict for approach flight operations. The upper altitude zenith tolerance criterion must still be met beyond the altitude range where the two criteria overlap or converge. This change makes the requirements in part 36 the same as the requirements in JAR 36. The use of expanded tolerances in JAR 36 has had no impact to noise acquisition and has reduced the number of approach test flights required.

A definition for the highest rotor speed used in approach is added to section H36.107(b)(5). The current rotor speed criterion specifies normal operating RPM. The average rotor speed is required to be within ±1.0 percent of maximum normal operating RPM during the 10 dB-down time interval. This change is made for the same reasons discussed at section 36.1(h)(5) in the preamble.

A new paragraph (b)(6) is added to section H36.107 of the final rule. This paragraph requires that a constant approach configuration be maintained and permits the landing gear to be extended when establishing the best rate-of-climb or the lowest approved speed for the approach. Both conditions must be consistent with aircraft airworthiness standards. This change makes the requirements for approach configuration in part 36 the same as the requirements in JAR 36.

Section H36.109 Measurement of Helicopter Noise Received on the Ground

In the final rule, the text in section H36.109 is being replaced with a reference to the procedures for measurements of helicopter noise received on the ground in section A36.3 of Appendix A. In the current rule, the procedures are listed in section H36.109 and A36.3. The final rule removes the text in section H36.109 because it is not necessary to have the same text repeated in part 36.

Section H36.111 Reporting and Correcting Measured Data

An allowable EPNL correction for takeoff flight condition is added to section H36.111(c)(2). The amount of this allowable correction is limited to 4.0 EPNdB. This change is intended to reduce the number of takeoff flights required during testing by allowing a greater range of acceptable data.

The description of the corrective conditions for reporting corrected measured noise data in section H36.111(c)(2) of the final rule is revised. This revised description is more general, and removes an outdated reference specifying the use of the ILS antenna position, which is not applicable to most other positioning methods. Paragraph (c)(2)(iii) is revised to include a reference to the detailed corrections specified in H36.205. Paragraph (c)(2)(iv) is deleted because we no longer correct for engine thrust or power for flyover noise levels. The major source of noise comes from the rotor systems; the engine thrust or power is a secondary noise effect. These changes make the requirements in part 36 the same as the requirements in JAR 36.

In section H36.111(c)(3), the aircraft noise level measurement required in each 1/3 octave band is changed from an allowance threshold of 5dB over the background noise to an allowance threshold of 3dB over the background noise. This change to appendix H adopts the same noise analysis change made in appendix B for transport category and turbojet powered airplanes. This amendment also replaces the term ''10 dB down points'' with ''10 dB-down time interval'' as the accepted nomenclature for this specific time segment. This harmonized background noise analysis threshold limit and the ''10 dB-down time interval'' term are in the final rule, ''Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes,'' published in the **Federal Register** on July 8, 2002 (67 FR 45196).

Section H36.113 Atmospheric Attenuation of Sound

In section H36.113(c)(1)(iii) of the final rule, the adjustment for the sound propagation path absorption is revised to require the use of the 10-meter temperature and relative humidity measurement values. The current sound propagation path absorption was based upon the average of temperature and relative humidity measurements made at aircraft altitude and at the 10-meter measurement stations. Noise certification data voluntarily collected by industry to date have demonstrated that EPNL values corrected using atmospheric data measured at 33 feet (10 meters) are acoustically identical to those corrected using averaged temperature and relative humidity.

Section H36.205 Detailed Data Correction Procedures

Section H36.205(a)(1) of the final rule is revised to include the addition of negative value corrections to the test data measurements. Currently, negative differences are assigned a zero value. The FAA has determined that negative value corrections are appropriate to account accurately for any differences between reference and test conditions. This change more accurately reflect the effects of noise reduction in the measurements.

In section H36.205(a)(1)(iii) of the final rule, the criteria for maximum certification weight for corrections are deleted. The effect of weight on EPNL is better accounted for by limiting the allowable test weight to be between 90 and 105 percent of the maximum certification weight.

In section H36.205(a)(2) of the final rule, the negative value correction procedures for reference and test conditions are revised. As discussed above, negative corrections are now included in paragraph (a)(1) of this section. Accordingly, section H36.205(a)(3) is redesignated as H36.205(a)(2).

In sections H36.205(a)(3)(iii), (b)(3) and (d)(3) of the final rule, the distance criterion used to calculate the duration corrections between measured and reference altitudes is revised. The new distance criterion is the distance between the measuring station and helicopter when the maximum PNLT (PNLTM) noise value is measured. The current distance criterion uses the simplified geometric closest point of approach (CPA). This change in distance criterion to the PNLTM-measured value is a more accurate method for computing noise duration corrections because it is based on the actual peak noise source characteristics.

The final rule amends section H36.205(a)(3)(iv) to permit the use of more general source noise data in flyover, when submitted for FAA approval prior to testing. The current formats require that the data be expressed in the form of EPNL curves or tables for variation of RPM and test speed. This final rule permits the use of more general source noise data, and alternative data formats.

In section H36.205(b)(ii)(2) of the final rule, the takeoff airspeed criteria is simplified by designating the slowest climb speed allowed under the aircraft airworthiness requirements as the minimum boundary. This final rule also removes the reference to rotor speed, because rotor speed is not needed in

describing a flight profile for data correction purposes.

As discussed previously in this document, a conforming change to section H36.105(b) and an associated harmonization issue were inadvertently omitted from proposed section H36.205(c)(1). The current flyover procedures require subsequent flyovers in reverse direction with a minimal of three flights in each direction. The FAA has determined that the suggested change to add the relative wind effects (head versus tail winds) will improve noise repeatability by further balancing directional wind effects over a test series. This final rule incorporates this additional effect of head versus tail wind because it is a technically sound approach, and results in a balanced flight procedure that is the same as JAR 36 requirements.

Section H36.205(d)(2) of the final rule eliminates the requirement that the noise test approach procedure be included in the Flight Manual. Noise test approach procedures are more appropriate for noise certification test reports. Including the procedures in the Flight Manual could be confused with approved airworthiness approach procedures. This final rule will also replace the term ''10 dB down period'' with ''10 dB-down time interval'' in section H36.205(d)(2), as the accepted nomenclature for this specific time segment.

Section H36.205(e)(1) of the final rule removes the requirement that only the advancing blade tip Mach number can be used when making source noise adjustments. The revised section allows the use of an alternate procedure for off-reference tip Mach number adjustments. The alternate procedure is expected to yield results identical to that of the more complex current procedure while substantially reducing the amount of additional flyover passes necessary to generate statistically valid source noise sensitivity curves. The flexibility of offering an alternative procedure is consistent with ICAO practices.

Figures H1, H2 and H3

In Notice No. 00–12, the FAA proposed to revise Figures H1 and H3 to include the height above measurement points in metric units and to delete the closest point of approach (CPA) distance designations. The FAA received no comments on this proposal and it is being adopted as proposed.

Although Figure H2 changes were not addressed in the NPRM, for accuracy and completeness, the FAA is making corrections to typographical errors and replacing incomplete designations. The word ''corrected'' is replaced with the word ''reference'' in the titles of Figures H1, H2 and H3 in the final rule. This change keeps the language in the final rule consistent throughout Appendix H.

Section H36.305 Noise Levels

Sections H36.305(a)(2)(i) through (iii), are revised by removing the phrase ''for maximum weight of 1,764 pounds or less'' from the end of each paragraph and replacing it with the phrase ''after which the limit is constant'' to adopt the same language used by ICAO standards.

Section J36.1 General

The maximum takeoff weight requirement of appendix J is increased from 6,000 pounds to 7,000 pounds in section J36.1 of the final rule. In the final rule, ''Normal Category Rotorcraft Maximum Weight and Passenger Seat Limitation,'' published in the **Federal Register** on August 18, 1999, (64 FR 45092), the allowable passenger seat limit for part 27 rotorcraft was increased to nine and the corresponding weight limit was increased to 7,000 pounds. The weight limit change is made in part 36, appendix J in this final rule.

Section J36.3 Reference Test Conditions

Section J36.3(c) of the final rule adds the phrase ''maintained throughout the measured portion of the flyover'' to clarify the requirement for stabilized airspeed. Stabilized airspeed will minimize the likelihood of variability of advancing tip Mach number. Section J36.3(c)(1) of the final rule adds the requirement that airspeed VNE must be included in the approved Flight Manual. This change standardizes the language used in appendices H and J. This section is also amended by replacing the term ''10 dB down time period'' with ''10 dB-down time interval'' as the accepted nomenclature for this specific time segment, as discussed previously.

Section J36.101 Noise Certification and Measurement Conditions

Section J36.101(c)(4) of the final rule revises the criterion by which meteorological data is collected. The current rule requires measurements to be made at the noise measuring station. The revision removes this requirement. This change and the following related changes to the final rule are harmonized with the JARs and add flexibility in the use of meteorological station requirements. The requirements of section J36.101(c)(6) are amended as follows:

1. The physical location of meteorological instruments must be representative of the atmospheric conditions existing near the surface over the geographical area where the helicopter noise measurements are made.

2. A fixed meteorological station, such as those found at airports, may be used to meet the location requirement.

3. A fixed meteorological station, if used, must be within 2,000 meters of the noise measurement area. The 2,000-meter distance limitation is a reasonable allowance when conducting tests relative to a ''fixed meteorological station,'' such as those found at airport sites or other facilities.

These changes harmonize this final rule with the JARs and do not pose a known increase in noise levels.

Section J36.105 Flyover Test Conditions

As previously stated in this document, an associated harmonization issue was inadvertently omitted in proposed section J36.105(b). The current flyover procedures require at least six flights over the noise measuring station, with an equal number in opposite direction. The FAA has determined the suggested change to add the relative wind effects (head versus tail winds) will improve noise repeatability by further balancing directional wind effects over a test series. This final rule incorporates this additional effect of head versus tail wind because it is a technically sound approach, and results in a balanced flight procedure that is the same as JAR 36 requirements.

The maximum weight limit is increased from 6,000 pounds to 7,000 pounds in section J36.305(a) of the final rule. This is a conforming change made for the reasons discussed above at section J36.1. The final rule also revises the value for the noise/weight reduction rate from ''3.01'' to ''3.0''. The effect of this change is so minimal that it has no effect on noise limit calculations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this final rule.

International Compatibility

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO

Standards and Recommended Practices and has identified the following two differences with this final rule. The FAA filed these differences with ICAO in 1999.

(1) In sections 36.11 and H36.305 of part 36, helicopters certificated before March 6, 1986 are permitted to amend their type certificates to reflect acoustical changes. The measured levels at recertification must meet either Stage 2 noise limits plus 2 EPNdB, or be no greater than the noise levels of the parent helicopter after a change in type design; and

(2) In § 36.805(c) of part 36, helicopters of the United States Armed Forces that operated on or before March 6, 1986 are permitted to amend their type certificates to reflect acoustical changes. The measured levels at recertification must meet either Stage 2 noise limits, or be no greater than the noise levels of the parent helicopter after a change in type design.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. § 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined this final rule (1) has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

This final rule will provide nearly uniform noise certification standards for helicopters certificated in the United States, the JAA countries, and any other countries that have adopted as their national regulation either the United States regulation, the JAA regulation, or the ICAO standard.

This final rule will more closely harmonize the flight test conditions, procedures, and documentation mandated by Appendices H and J of 14 CFR part 36 with the corresponding applicable provisions of the JAR 36 and the ICAO Annex 16. Specifically, this final rule will amend the technical specifications embodied in Appendix H and Appendix J of part 36 along with a minor technical change to Appendix B, and add a new definition to § 36.1.

The FAA concludes that this final rule will be cost beneficial. This final rule will lessen the certification test burden by (1) requiring fewer takeoffs and approaches; (2) eliminating aircraft humidity and temperature measurements and the requirements to process test data twice and to issue separate reports for FAA and ICAO methods and; (3) extending the upper gross weight limit for rotorcraft using the Appendix J certification test procedure. The expected cost savings of the final rule will be $6.6 million ($4.6 million, discounted) over a 10 year period. The one-time cost of this final rule will be $40,800 ($33,300 discounted) and will accrue to those manufacturers that also need to obtain ICAO/JAA certification.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the final rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and that a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and its reasoning should be clear.

Small entities are firms employing 1,500 employees or less, based on Small Business Administration guidelines. Enactment of this final rule will impose a one-time cost of $10,200 per test for a small entity, which would be incurred by two small helicopter manufacturers that met the criterion of small entity. The expected cost savings per test for a small entity could be at least $85,000. In view of the net cost savings per small entity, the FAA has determined that this final rule will not have a significant adverse economic impact on a substantial number of small entities; therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any related activities to develop standards that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will reduce trade barriers by reducing the differences between U.S. and European regulations.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector;

such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule will not have federalism implications.

Environmental Analysis

In accordance with the provisions of regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508), FAA Order 1050.1D identifies certain FAA actions that may be categorically excluded from preparing an Environmental Assessment or an Environmental Impact Statement. Pursuant to FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation and no extraordinary circumstances exist as prescribed under paragraph 32 of Order 1050.1D.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 36

Aircraft, Noise control.

The Amendment

■ In consideration of the foregoing the FAA amends part 36 of title 14 Code of Federal Regulations, as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

■ 2. Section 36.1 is amended by adding a new paragraph (h)(5) to read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(h) * * *

(5) *Maximum normal operating RPM* means the highest rotor speed corresponding to the airworthiness limit imposed by the manufacturer and approved by the FAA. Where a tolerance on the highest rotor speed is specified, the maximum normal operating rotor speed is the highest rotor speed for which that tolerance is given. If the rotor speed is automatically linked with flight condition, the maximum normal operating rotor speed corresponding with that flight condition must be used during the noise certification procedure. If rotor speed can be changed by pilot action, the highest normal operating rotor speed specified in the flight manual limitation section for power-on conditions must be used during the noise certification procedure.

§ 36.11 [Amended]

■ 3. Section 36.11 is amended by removing the term ''6,000'' and adding the term ''7,000'' in its place in the introductory text and paragraph (a)(1).

§ 36.801 [Amended]

■ 4. Section 36.801 is amended by removing the term ''6,000'' and adding the term ''7,000'' in its place.

Subpart O—Documentation, Operating Limitations and Information

■ 5. Revise the heading of Subpart O to read as set forth above.

■ 6. In § 36.1581 paragraph (a)(2) is revised and a new paragraph (a)(3) is added to read as follows:

§ 36.1581 Manuals, markings, and placards

(a) * * *

(2) For propeller driven small airplanes, the noise level information must be one value for takeoff as defined and required by appendix G of this part, along with the maximum takeoff weight and configuration.

(3) For rotorcraft, the noise level information must be one value for each takeoff, flyover, and approach as defined and required by appendix H of this part, or one value for flyover as defined and required by appendix J of this part, at the maximum takeoff weight and configuration.

* * * * *

■ 7. In appendix H to part 36, section H36.3 is amended by revising paragraphs (a)(1), (c)(2), (d), (e), and (f)(1)(i) and (ii) to read as follows:

Appendix H to Part 36—Noise Requirements for Helicopters Under Subpart H

* * * * *

Section H36.3 Reference test conditions.

(a) * * *

(1) Sea level pressure of 2,116 psf (1,013.25 hPa).

* * * * *

(c) * * *

(2) The reference flight path is defined as a straight line segment inclined from the starting point (1,640 feet (500 meters) from the center microphone location and 65 feet (20 meters) above ground level) at a constant climb angle β defined by the certificated best rate of climb and V_y for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through C_r and continues, crossing over station A, to the position corresponding to the end of the type certification takeoff path represented by position I_r.

(d) *Level flyover reference profile.* The beginning of the level flyover reference profile is represented by helicopter position D_r (Figure H2). The helicopter approaches position D_r in level flight 492 feet above ground level as measured at Station A. Reference airspeed must be either $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts ($0.45V_H$ + 120km/h); or $0.45V_{NE}$ + 65kts ($0.45V_{NE}$ + 120 km/h), whichever of the four speeds is least. The helicopter crosses directly overhead station A in level flight and proceeds to position J_r.

(e) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specified engine torque corresponding to maximum continuous power available for sea level pressure of 2,116 psf (1,013.25 hPa) at 77° F (25° C) ambient conditions at the relevant maximum certificated weight. The value of V_{NE} is the never-exceed airspeed. The values of V_H and V_{NE} that are used for

noise certification must be listed in the approved Rotorcraft Flight Manual.

* * * * *

(f) * * *

(1) * * *

(i) The beginning of the approach profile is represented by helicopter position E. The position of the helicopter is recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of Maximum Tone Corrected Perceived Noise Level (PNLTM). The reference flight path, E_rK_r represents a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° approach angle.

(ii) The test approach profile is defined by the approach angle η passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile. The test approach angle η must be between 5.5° and 6.5°.

* * * * *

■ 8. In appendix H to part 36, section H36.5, the Flight Profile Identification—Positions table is amended by removing the symbols S_r, T and T_r and their descriptions; the Flight Profile Distances table is amended by removing the symbols AS, AS_r, AT, and AT_r and their descriptions; and the Flight Profile Identification—Positions table is amended by adding in alphabetical order three new symbols (F_r, G_r, H_r), with their descriptions and revising the entry for S to read as follows:

* * * * *

Section H36.5 Symbols and Units

FLIGHT PROFILE IDENTIFICATION—POSITIONS

Position	Description
*	* * * *
F_r	Position on reference takeoff path directly above noise measuring Station A.
*	* * * *
G_r	Position on reference flyover path directly above noise measuring Station A.
*	* * * *
H_r	Position on reference path directly above noise measuring Station A.
*	* * * *
S	Sideline noise measuring station (note: a subscript denotes the aircraft orientation relative to the direction of flight).

FLIGHT PROFILE IDENTIFICATION—POSITIONS—Continued

Position	Description
*	* * * *

■ 9. In appendix H to part 36, section H36.101 is amended by removing paragraphs (b)(6)(iii), (b)(8)(iii), and (b)(9); by revising paragraphs (b)(6)(i), (b)(8)(ii), (c)(2), (c)(3), (c)(5), (c)(7), (d)(1), (d)(2), (d)(3); and by adding a new paragraph (d)(4) to read as follows:

* * * * *

Section H36.101 Noise Certification Test and Measurement Conditions

* * * * *

(b) * * *

(6) * * *

(i) At least one takeoff test and one flyover test must be conducted at, or above, the maximum certification weight.

* * * * *

(8) * * *

(ii) Each test weight must be between +5 percent and −10 percent of the maximum certification weight.

* * * * *

(c) * * *

(2) Ambient air temperature between 14°F and 95°F (−10°C and 35°C), inclusively, at a point 33 feet (10 meters) above the ground at the noise measuring station and at the aircraft. The temperature and relative humidity measured at a point 33 feet (10 meters) above the ground at the noise measuring station must be used to adjust for propagation path absorption.

(3) Relative humidity and ambient temperature at a point 33 feet (10 meters) above the ground at the noise measuring station and at the aircraft, is such that the sound attenuation in the one-third octave band centered at 8 kHz is not greater than 12 dB/100 meters and the relative humidity is between 20 percent and 95 percent, inclusively.

* * * * *

(5) No anomalous meteorological conditions (including turbulence) that will significantly affect the noise level of the aircraft when the noise is recorded at each noise measuring station.

* * * * *

(7) Temperature and relative humidity measurements must be obtained within 30 minutes of each noise test.

(d) *Aircraft testing procedures.* (1) The aircraft testing procedures and noise measurements must be conducted and processed in a manner that yields the noise evaluation measure designated as Effective Perceived Noise Level (EPNL) in units of EPNdB, as prescribed in Appendix A of this part.

(2) The helicopter height and lateral position relative to the reference flight track (which passes through the flight track noise measuring station) must be determined using an FAA-approved method. The equipment used to make the determination must be independent of normal flight instrumentation. Applicable independent systems are radar tracking, theodolite triangulation, laser trajectography, photo scaling, or differential global positioning system.

(3) The helicopter position along the flight path must be related to the noise recorded at the noise measuring stations by means of synchronized signals recorded at an approved sampling rate. The helicopter position must be recorded relative to the reference flight track during the entire time interval in which the recorded signal is within 10 dB of PNLTM. Measuring and sampling equipment must be approved by the FAA before testing.

(4) Aircraft performance data sufficient to make the corrections required under section H36.205 of this appendix must be recorded at an FAA-approved sampling rate using FAA-approved equipment.

* * * * *

■ 10. In appendix H to part 36, section H36.103 is amended by revising paragraphs (b)(1), (3), (4), (5), and (6), and by adding new paragraph (b)(7) to read as follows:

* * * * *

Section H36.103 Takeoff Test Conditions

* * * * *

(b) * * *

(1) An airspeed of either $V_y \pm 5$ knots or the lowest approved speed ± 5 knots for the climb after takeoff, whichever speed is greater, must be established and maintained throughout the 10 dB-down time interval.

* * * * *

(3) Upon reaching a point 1,640 feet (500 meters) from the noise measuring station, the helicopter must be stabilized at the maximum takeoff power that corresponds to minimum installed engine(s) specification power available for the reference ambient conditions or gearbox torque limit, whichever is lower.

(4) The helicopter must be maintained throughout the 10 dB-down time interval at the best rate of climb speed $V_y \pm 5$ knots, or the lowest approved speed for climb after takeoff, whichever is greater, for an ambient temperature of 25°C at sea level.

(5) The average rotor speed must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval.

(6) The helicopter must stay within ±10° or ±65 feet (±20 meters), whichever is greater, from the vertical above the reference track throughout the 10dB-down time interval.

(7) A constant takeoff configuration selected by the applicant must be maintained throughout the takeoff reference procedure with the landing gear position consistent with the airworthiness certification tests for establishing best rate-of-climb speed, V_y.

* * * * *

■ 11. In appendix H to part 36, Section H36.105 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(3), (c)(1), and (c)(2) to read as follows:

Section H36.105 Flyover Test Conditions.

* * * * *

(b) A test series consists of at least six flights. The number of level flights made with a headwind component must be equal to the number of level flights made with a tailwind component with simultaneous measurements at all three noise measuring stations—

(1) In level flight cruise configuration;

* * * * *

(3) The helicopter must fly within ±10° or ±65 feet (±20 meters), whichever is greater, from the vertical above the reference track throughout the 10 dB-down time interval.

(c) * * *

(1) At a speed of $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts ($0.45V_H$ + 120 km/h); or $0.45V_{NE}$ + 65 kts ($0.45V_{NE}$ + 120 km/h), whichever speed is least, to be maintained throughout the measured portion of the flyover;

(2) At average rotor speed, which must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval.

* * * * *

■ 12. In appendix H to part 36, Section H36.107 is amended by revising paragraphs (b)(2), (3) and (5) and adding new paragraph (b)(6) to read as follows:

* * * * *

Section H36.107 Approach Test Conditions.

* * * * *

(b) * * *

(2) At a height of 394 ± 33 feet (120 ± 10 meters)

(3) The helicopter must fly within ±10° or ±65 feet (±20 meters) lateral deviation tolerance, whichever is greater, from the vertical above the reference track throughout the 10 dB-down time interval;

* * * * *

(5) At average rotor speed, which may not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval; and

(6) The constant approach configuration used in airworthiness certification tests, with the landing gear extended, must be maintained throughout the approach reference procedure.

* * * * *

■ 13. In Appendix H to part 36, section H36.109 is revised to read as follows:

* * * * *

Section H36.109 Measurement of Helicopter Noise Received on the Ground

The measurement system and the measurement, calibration and general analysis procedures to be used are provided in Appendix A, section A36.3 of this part.

■ 14. In Appendix H to part 36, section H36.111 is amended by revising paragraphs (c)(2) and (3) to read as follows:

* * * * *

Section H36.111 Reporting and Correcting Measured Data

* * * * *

(c) * * *

(2) The measured flight path must be corrected by an amount equal to the difference between the applicant's predicted flight path for the certification reference conditions and the measured flight path at the test conditions. Necessary corrections relating to helicopter flight path or performance may be derived from FAA-approved data for the difference between measured and reference conditions, together with appropriate allowances for sound attenuation with distance. The Effective Perceived Noise Level (EPNL) correction may not exceed 2.0 EPNdB except for takeoff flight condition, where the correction may not exceed 4.0 EPNdB, of which the arithmetic sum of Δ_1 (described in section H36.205(f)(1)) and the term -7.5 log (AL/AL_r) from Δ_2 term (described in section H36.205(g)(1)(i)) may not exceed 2.0 EPNdB, for any combination of the following:

(i) The helicopter not passing vertically above the measuring station.

(ii) Any difference between the reference flight track and the actual test flight track; and

(iii) Detailed correction requirements prescribed in section H36.205 of this appendix.

(3) Helicopter sound pressure levels within the 10 dB-down time interval must exceed the mean background sound pressure levels determined under section B36.3.9.11 by at least 3 dB in each one-third octave band, or must be corrected under an FAA-approved method.

* * * * *

■ 15. In Appendix H to part 36, section H36.113 is amended by revising paragraphs (b) and (c)(1)(iii) to read as follows:

* * * * *

Section H36.113 Atmospheric Attenuation of Sound

* * * * *

(b) *Attenuation rates.* The procedure for determining the atmospheric attenuation rates of sound with distance for each one-third octave bands must be determined in accordance with Society of Automotive Engineering (SAE) ARP 866A. The atmospheric attenuation equations are provided in both the International and English system of units in section A36.7 of this part.

(c) * * *

(1) * * *

(iii) The temperature and relative humidity measured at 33 feet (10 meters) above the ground must be used to adjust for propagation path absorption.

* * * * *

■ 16. In appendix H to part 36, section H36.201 is amended by removing the term ''appendix B'' and adding the term ''appendix A'' in paragraph (a) introductory text and by removing the term ''instantaneous'' in paragraph (a)(1).

■ 17. In Appendix H to part 36, section H36.205 is amended by removing paragraph (a)(3); by revising paragraphs (a)(1), (a)(2), (b)(2), (b)(3), (c)(1), (d)(2), (d)(3), (e), (f), and (g)(1)(i) through (iv) and by revising Figures H1, H2, and H3 to read as follows:

* * * * *

Section H36.205 Detailed Data Correction Procedures

(a) * * *

(1) If there is any difference between measured test and reference conditions, an appropriate correction must be made to the EPNL calculated from the measured noise data. Conditions that can result in a different value include:

(i) Atmospheric absorption of sound under measured test conditions that are different from the reference test conditions; or

(ii) Measured flight path that is different from the reference flight path.

(2) The following correction procedures may produce one or more possible correction values which must be added algebraically to the calculated EPNL to bring it to reference conditions:

(i) The flight profiles must be determined for both reference and test conditions. The procedures require noise and flight path recording with a synchronized time signal from which the test profile can be delineated, including the aircraft position for which PNLTM is observed at the noise measuring station. For takeoff, the flight profile corrected to reference conditions may be derived from FAA approved manufacturer's data.

(ii) The sound propagation paths to the microphone from the aircraft position corresponding to PNLTM must be determined for both the test and reference profiles. The SPL values in the spectrum of PNLTM must then be corrected for the effects of—

(A) Change in atmospheric sound absorption;

(B) Atmospheric sound absorption on the linear difference between the two sound path lengths; and

(C) Inverse square law on the difference in sound propagation path length. The corrected values of SPL must then be converted to a reference condition PNLTM value from which PNLTM must be subtracted. The resulting difference represents the correction which must be added algebraically to the EPNL calculated from the measured data.

(iii) As observed at the noise measuring station, the measured PNLTM distance is different from the reference PNLTM distance and therefore the ratio must be calculated and used to determine a noise duration correction factor. Effective perceived noise level, EPNL, is determined by the algebraic sum of the maximum tone corrected perceived noise level (PNLTM) and the duration correction factor.

(iv) For aircraft flyover, alternative source noise corrections require FAA approval and must be determined and adjusted to account for noise level changes caused by the differences between measured test conditions and reference conditions.

(b) * * *

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either $V_y \pm 5$ knots or the lowest approved speed for the climb after takeoff, whichever speed is greater.

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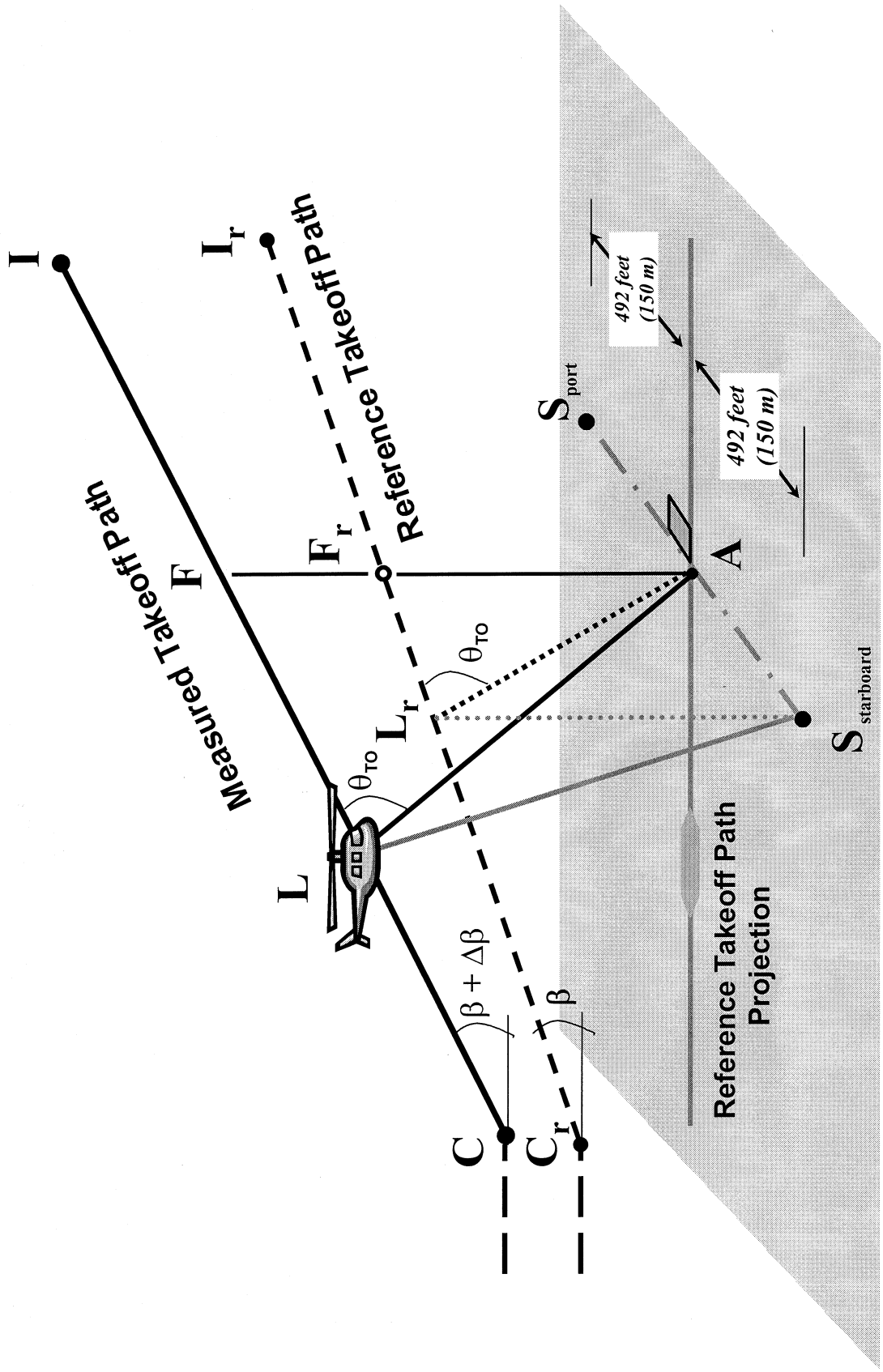

Figure H1.
Comparison of Measured and Reference Takeoff Profiles

(3) Figure H1 illustrates the significant geometrical relationships influencing sound propagation. Position L represents the helicopter location on the measured takeoff path from which PNLTM is observed at station A, and L_r is the corresponding position on the reference sound propagation path. Propagation paths AL and AL_r both form the same angle θ (theta) relative to their respective flight paths.

(c) *Level flyover profiles.* (1) The noise type certification level flyover profile is shown in Figure H2. Airspeed must be stabilized within ±5 knots of the reference airspeed determined using the procedures in section H36.3(d). The number of level flights made with a headwind component must be equal to the number of level flights made with a tailwind component.

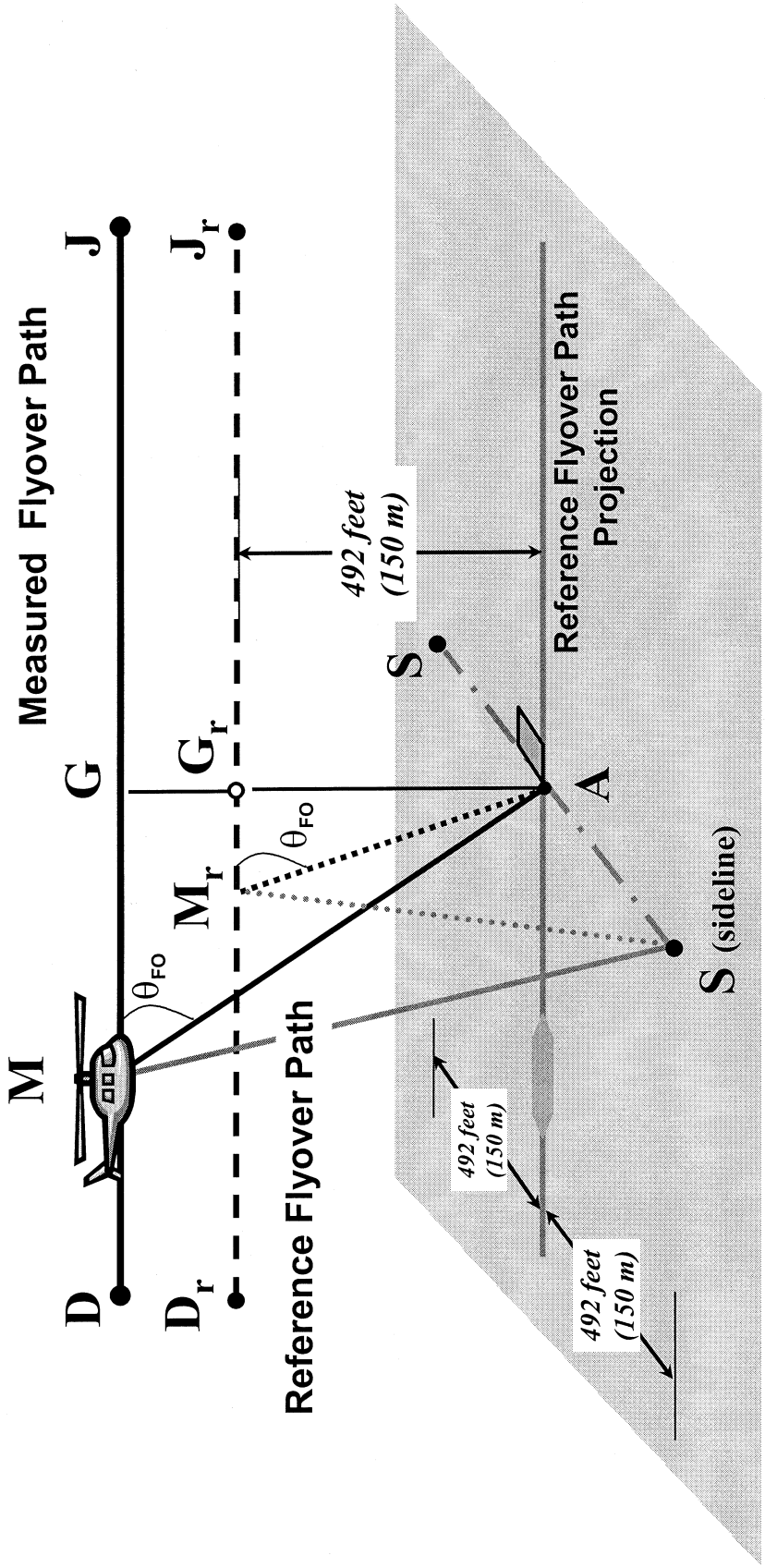

Figure H2.
Comparison of Measured and Reference Flyover Profiles

* * * * *

(d) * * *

(2) The helicopter approaches position H along a 6° (±0.5°) average approach slope throughout the 10dB-down time interval. Deviation from the 6° average approach slope must be approved by the FAA before testing.

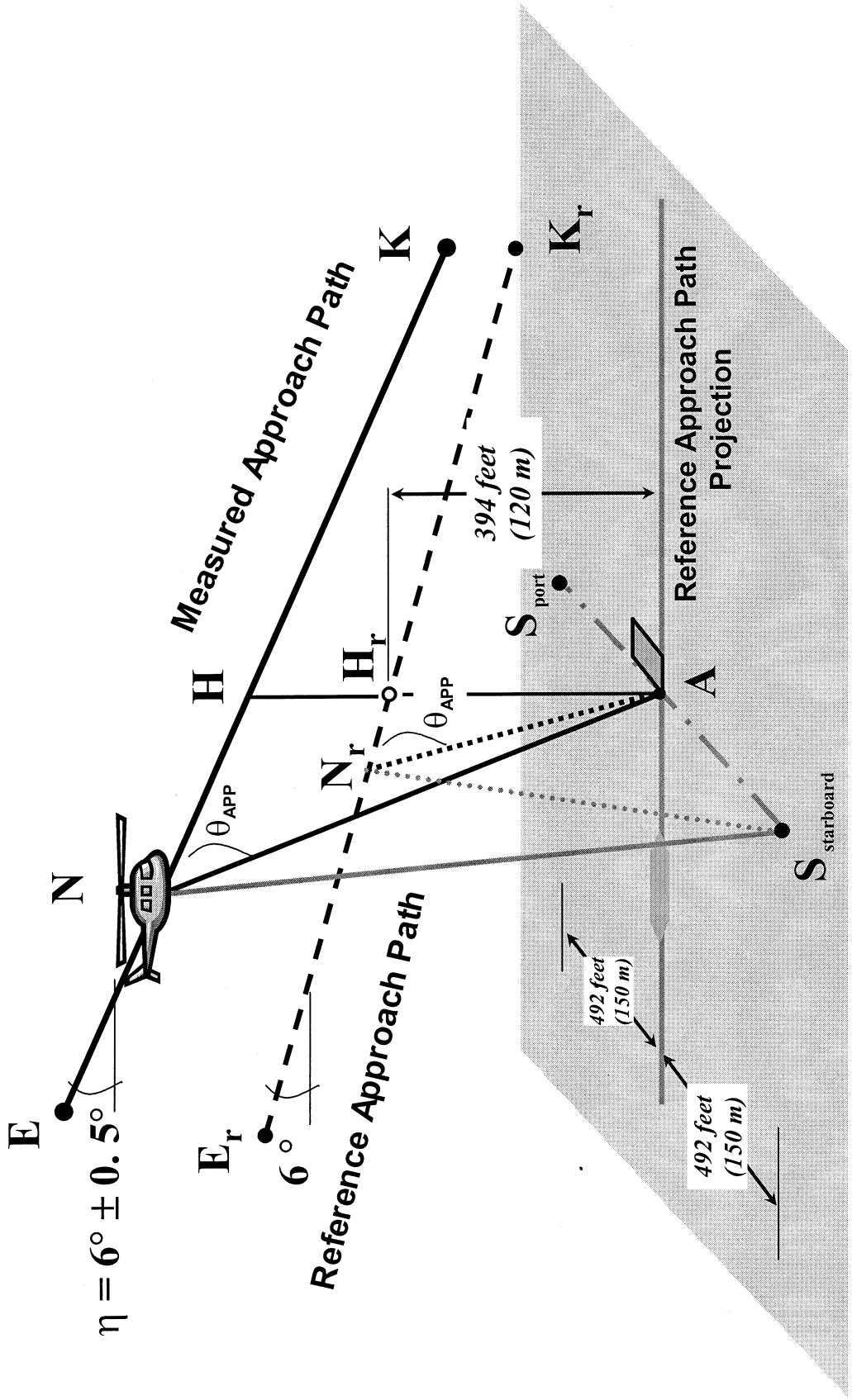

Figure H3.
Comparison of Measured and Reference Approach Profiles

(3) Figure H3 illustrates portions of the measured and reference approach flight paths including the significant geometrical relationships influencing sound propagation. The measured approach path is represented by segment EK with an approach allowable angle θ. Reference positions, E_r and K_r, define an idealized reference approach angle of 6°. Position N represents the helicopter location on the measured approach flight path for which PNLTM is observed at measuring station A, and N_r is the corresponding position on the reference approach flight path. The measured and reference noise propagation paths are AN and AN_r, respectively, both of which form the same angle, θ_{APP}, corresponding to PNLTM relative to their approach flight paths.

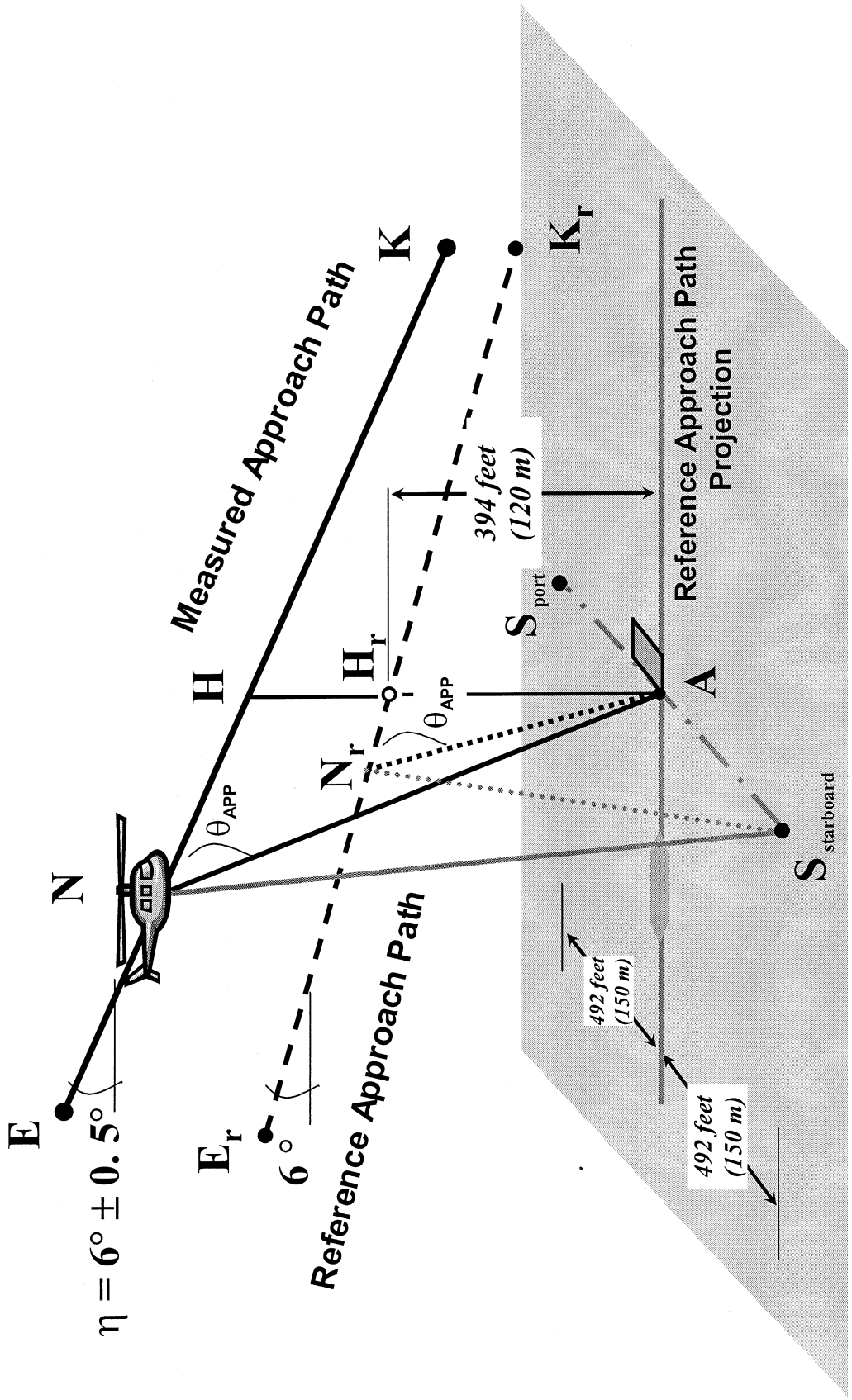

Figure H3.
Comparison of Measured and Reference Approach Profiles

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(e) *Correction of noise at source during level flyover.* (1) For level overflight, if any combination of the following three factors, airspeed deviations from reference, rotor speed deviations from reference, and temperature deviations from reference, results in a noise correlating parameter whose value deviates from the reference value of this parameter, then source noise adjustments must be determined from the manufacturer's data that is approved by the FAA.

(2) Off-reference tip Mach number adjustments must be based upon a sensitivity curve of PNLTM versus advancing blade tip Mach number, deduced from overflights performed at different airspeeds surrounding the reference airspeed. If the test aircraft is unable to attain the reference value, then an extrapolation of the sensitivity curve is permitted if data cover at least a range of 0.03 Mach units. The advancing blade tip Mach number must be computed using true airspeed, onboard outside air temperature, and rotor speed. A separate PNLTM versus advancing blade tip Mach number function must be derived for each of the three certification microphone locations, *i.e.*, centerline, sideline left, and sideline right. Sideline left and right are defined relative to the direction of flight for each run. PNLTM adjustments are to be applied to each microphone datum using the appropriate PNLTM function.

(f) *PNLT corrections.* If the measured ambient atmospheric conditions of temperature and relative humidity differ from those prescribed as reference conditions under this appendix (77 degrees F and 70 percent, respectively), corrections to the EPNL values must be calculated from the measured data under paragraph (a) of this section as follows:

(1) *Takeoff flight path.* For the takeoff flight path shown in Figure H1, the spectrum of PNLTM observed at station A for the aircraft at position L is decomposed into its individual SPL(i) values.

(i) Step 1. A set of corrected values are then computed as follows:

$$SPL(i)_r = SPL(i) + C[\alpha(i) - \alpha(i)_o]AL + C\alpha(i)_o (AL - AL_r) + 20 \log (AL/AL_r)$$

where SPL(i) and SPL$(i)_r$ are the measured and corrected sound pressure levels, respectively, in the i-th one-third octave band. The first correction term adjusts for the effect of change in atmospheric sound absorption where $\alpha(i)$ and $\alpha(i)_o$ are the sound attenuation coefficients for the test and reference atmospheric conditions, respectively, for the i-th one-third octave band, and AL is the measured takeoff sound propagation path. The conversion factor constant, C, is 0.001 for English System of Units and is 0.01 for International System of Units. The second correction term adjusts for the effects of atmospheric attenuation due to the difference in the sound propagation path length where AL_r is the Reference takeoff sound propagation path. The third correction term, known as the ''inverse square'' law, adjusts for the effect of the difference in the sound propagation path lengths.

(ii) Step 2. The corrected values of the SPL$(i)_r$ are then converted to reference condition PNLT and a correction term calculated as follows:

$$\Delta_1 = PNLT - PNLTM$$

which represents the correction to be added algebraically to the EPNL calculated from the measured data.

(2) *Level flyover flight path.* (i) The procedure described in paragraph (f)(1) of this section for takeoff paths is also used for the level flyover paths, with the values of SPL$(i)_r$ relating to the flyover sound propagation paths shown in Figure H2 as follows:

$$SPL(i)_r = SPL(i) + C[\alpha(i) - \alpha(i)_o]AM + C\alpha(i)_o (AM - AM_r) + 20 \log (AM/AM_r)$$

where the lines AM and AM_r are the measured and reference level flyover sound propagation paths, respectively.

(ii) The remainder of the procedure is the same for the flyover condition as that prescribed in the paragraph (f)(1)(ii) of this section regarding takeoff flight path.

(3) *Approach flight path.* (i) The procedure described in paragraph (f)(1) of this section for takeoff paths is also used for the approach paths, with the values of SPL$(i)_r$ relating to the approach sound propagation paths shown in Figure H3 as follows:

$$SPL(i)_r = SPL(i) + C[\alpha(i) - \alpha(i)_o]AN + C\alpha(i)_o (AN - AN_r) + 20 \log (AN/AN_r)$$

where the lines AN and AN_r are the measured and reference approach sound propagation paths, respectively.

(ii) The remainder of the procedure is the same for the approach condition as that prescribed in the paragraph (f)(1)(ii) of this section regarding takeoff flight path.

(4) *Sideline microphones.* (i) The procedure prescribed in paragraph (f)(1) of this section for takeoff paths is also used for the propagation to the sideline locations, with the values of SPL$(i)_r$ relating as follows to the measured sideline sound propagation path shown in Figure H3 as follows:

$$SPL(i)_r = SPL(i) + C[\alpha(i) - \alpha(i)_o]SX + C\alpha(i)_o (SX - SX_r) + 20 \log (SX/SX_r)$$

where S is the sideline measuring station and, based upon the flight condition, the helicopter positions, X and X_r, correspond to:

X = L, and $X_r = L_r$ for takeoff
X = M, and $X_r = M_r$ for flyover
X = N, and $X_r = N_r$ for approach

(ii) The remainder of the procedure is the same for the sideline paths as that prescribed in the paragraph (f)(1)(ii) of this section regarding takeoff flight paths.

(g) * * *

(1) * * *

(i) *Takeoff flight path.* For the takeoff path shown in Figure H1, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (AL/AL_r) + 10 \log (V/V_r)$$

which represents the correction that must be added algebraically to the EPNL calculated from the measured data. The lengths AL and AL_r are the measured and reference takeoff distances from the noise measuring station A to the measured and the reference takeoff paths, respectively. A negative sign indicates that, for the particular case of a duration correction, the EPNL calculated from the measured data must be reduced if the measured takeoff path is at greater altitude than the reference takeoff path.

(ii) *Level flyover flight paths.* For the level flyover flight path, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (AM/AM_r) + 10 \log (V/V_r)$$

where AM is the measured flyover distance from the noise measuring station A to the measured flyover path, and AM_r is the reference distance from station A to the reference flyover path.

(iii) *Approach flight path.* For the approach path shown in Figure H3, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (AN/AN_r) + 10 \log (V/V_r)$$

where AN is the measured approach distance from the noise measuring station A to the measured approach path, and AN_r is the reference distance from station A to the reference approach path.

(iv) *Sideline microphones.* For the sideline flight path, the correction term is calculated using the formula—

$$\Delta_2 = -7.5 \log (SX/SX_r) + 10 \log (V/V_r)$$

where S is the sideline measuring station and based upon the flight condition, the helicopter positions, X and X_r, correspond to:

X = L, and $X_r = L_r$ for takeoff
X = M, and $X_r = M_r$ for flyover
X = N, and $X_r = N_r$ for approach

* * * * *

■ 18. In Appendix H to part 36, section H36.305(a)(2) is revised to read as follows:

* * * * *

Section H36.305 Noise Levels

(a) * * *

(2) *Stage 2* noise limits are as follows:

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of 176,370 pounds (80,000 kg) or more, reduced by 3.01 EPNdB per halving of the weight down to 89 EPNdB, after which the limit is constant.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds (80,000 kg) or more, reduced by 3.01 EPNdB per halving of the weight down to 88 EPNdB, after which the limit is constant.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds (80,000 kg) or more, reduced by 3.01 EPNdB per halving of the weight down to 90 EPNdB, after which the limit is constant.

* * * * *

Appendix J—[Amended]

■ 19. Amend the title of Appendix J to part 36 and section J36.1 introductory text by removing the term ''6,000'' and adding ''7,000'' in its place.

■ 20. In Appendix J to part 36, section J36.3 is amended by revising paragraph (c) introductory text and paragraph (c)(1) to read as follows:

Appendix J to Part 36—Alternative Noise Certification Procedure for Helicopters Under Subpart H Having a Maximum Certificated Takeoff Weight of Not More Than 7,000 Pounds

* * * * *

Section J36.3 Reference Test Conditions

* * * * *

(c) *Level flyover reference profile.* The reference flyover profile is a level flight, 492 feet (150 meters) above ground level as measured at the noise measuring station. The reference flyover profile has a linear flight track and passes directly over the noise monitoring station. Airspeed is stabilized at $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts (120 km/h); or $0.45V_{NE}$ + 65 kts (120 km/h), whichever of the four airspeeds is least, and maintained throughout the measured portion of the flyover. Rotor speed is stabilized at the maximum normal operating RPM throughout the 10 dB-down time interval.

(1) For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the minimum specification engine power corresponding to maximum continuous power available for sea level pressure of 2,116 psf (1,013.25 hPa) at 77°F (25°C) ambient conditions at the relevant maximum certificated weight. The value of V_H and V_{NE} used for noise certification must be included in the Flight Manual.

* * * * *

■ 21. In Appendix J to part 36, section J36.101 is amended by revising paragraph (c)(4) and (c)(6) to read as follows:

* * * * *

Section J36.101 Noise Certification Test and Measurement Conditions

* * * * *

(c) * * *

(4) Measurements of ambient temperature, relative humidity, wind speed, and wind direction must be made between 4 feet (1.2 meters) and 33 feet (10 meters) above the ground. Unless otherwise approved by the FAA, ambient temperature and relative humidity must be measured at the same height above the ground.

* * * * *

(6) If the measurement site is within 6560 feet (2,000 meters) of a fixed meteorological station (such as those found at airports or other facilities) the weather measurements reported for temperature, relative humidity and wind velocity may be used, if approved by the FAA.

* * * * *

■ 22. In Appendix J in part 36, section J36.105 is amended by revising paragraph (b) introductory text to read as follows:

* * * * *

Section J36.105 Flyover Test Conditions

* * * * *

(b) A test series must consist of at least six flights. The number of level flights made with a headwind component must be equal to the number of level flights made with a tailwind component over the noise measurement station:

* * * * *

■ 23. In Appendix J to part 36, section J36.109 is amended in paragraph (d)(1)(ii) by removing the words ''section H36.109(c)(3) of appendix H'' and adding the words ''section A36.3.6 of appendix A'' in its place; in paragraph (e)(1) by removing the words ''section H36.109(e) of appendix H'' and adding the words ''section A36.3.6 of appendix A'' in its place; and by revising paragraph (c)(4) to read as follows:

* * * * *

Section J36.109 Measurement of Helicopter Noise Received on the Ground

* * * * *

(c) * * *

(4) The calibration and checking of measurement systems must use the procedures described in Section A36.3.9.

* * * * *

■ 24. In Appendix J to part 36, section J36.305 is amended by revising paragraph (a) to read as follows:

* * * * *

Section J36.305 Noise Limits

* * * * *

(a) For primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 7,000 pounds that are noise tested under this appendix, the Stage 2 noise limit is 82 decibels SEL for helicopters up to 1,737 pounds maximum certificated takeoff weight at which the noise certification is requested, and increasing at a rate of 3.0 decibels per doubling of weight thereafter. The limit may be calculated by the equation: L_{AE} (limit) = 82 + 3.0 [$\log_{10}$ (MTOW/1737)/$\log_{10}$(2)] dB, where MTOW is the maximum takeoff weight, in pounds, for which certification under this appendix is requested.

* * * * *

Issued in Washington, DC, on May 24, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–12069 Filed 6–1–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
June 2, 2004

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 484

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 484

[CMS–1265–P]

RIN 0938–AM93

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2005

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. As part of this proposed rule, we also are proposing to rebase and revise the home health market basket to ensure it continues to adequately reflect the price changes of efficiently providing home health services. In addition, we are proposing to revise the fixed dollar loss ratio, which is used in the calculation of outlier payments. This proposed rule would be the first update of the home health prospective payment system (HH PPS) rates on a calendar year update cycle. HH PPS was moved to a calendar year update cycle as a result the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

DATE: To be assured of consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 2, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1265–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov.* Mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1265–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public Web site.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Randy Throndset, (410) 786–0131.

Debra Gillespie, (410) 786–4631.

Mary Lee Seifert (Market Basket), (410) 786–0030.

Mollie Knight (Market Basket), (410) 786–7948.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

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I. Background

(If you choose to comment on issues in this section, please include the caption **Background** at the beginning of your comments.)

A. Statutory Background

The Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS.

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895, entitled ''Prospective Payment For Home Health Services,'' to the Social Security Act (the Act).

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable

to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for the different area wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

B. Updates

On July 3, 2000, we published a final rule (65 FR 41128) in the **Federal Register** to implement the HH PPS legislation. That final rule established requirements for the new PPS for HHAs as required by section 4603 of the BBA, and as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, Public Law 105–277, enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, Public Law 106–113, enacted on November 29, 1999. The requirements include the implementation of a PPS for HHAs, consolidated billing requirements, and a number of other related changes. The PPS described in that rule replaced the retrospective reasonable-cost-based system that was used by Medicare for the payment of home health services under Part A and Part B.

As required by section 1895(b)(3)(B) of the Act, we have updated the HH PPS rates annually in a separate **Federal Register** document. We will respond to public comments received on the FY 2004 update notice (68 FR 39764) published on July 2, 2003 in the CY 2005 final rule.

C. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment, adjusted for case mix and wage index. For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the 60-day episode payment for certain intervening events that give rise to a partial episode payment adjustment (PEP adjustment) or a significant change in condition adjustment (SCIC). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available. For a complete and full description of the HH PPS as required by the BBA and as amended by OCESAA and BBRA, see the July 3, 2000 HH PPS final rule (65 FR 41128).

D. Medicare Prescription Drug, Improvement, and Modernization Act of 2003

On December 8, 2003, the Congress enacted the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173). This new legislation affects our proposed update to HH payment rates. Specifically, section 421 of MMA requires, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act), with respect to episodes or visits ending on or after April 1, 2004 and before April 1, 2005, that the Secretary increase the payment amount that otherwise would have been made under section 1895 of the Act for the services by 5 percent.

The statute waives budget neutrality for the purposes of this increase as it specifically states that the Secretary will not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

Section 701 of the MMA changes the yearly update cycle of the HH PPS rates from that of a fiscal year to a calendar year update cycle for 2004 and any subsequent year. Generally, section 701(a) of the MMA changes the references in the statute to refer to the calendar year for 2004 and any subsequent year. The changes result in updates to the HH PPS rates described as ''fiscal year'' updates for 2002 and 2003 and as calendar ''year'' updates for 2004 and any subsequent year (section 1895(b)(3)(B)(i) of the Act). In light of these provisions, we will not be updating the HH PPS rates on October 1, 2004 as HH PPS will now be updated on a calendar year update cycle.

In addition to changing the update cycle for HH PPS rates, section 701 of the MMA makes adjustments to the home health applicable increase percentage for 2004, 2005, and 2006. Specifically, section 701(a)(2)(D) of the MMA leaves unchanged the home health market basket increase for the last calendar year quarter of 2003 and the first calendar year quarter of 2004 (section 1895(b)(3)(B)(ii)(II) of the Act). Furthermore, section 701(b)(4) of the MMA sets the home health applicable percentage increase for the last 3 quarters of 2004 as the home health market basket (3.3 percent) minus 0.8 percentage point (section 1895(b)(3)(B)(ii)(III) of the Act). We implemented this provision through Pub. 100–20, One Time Notification, Transmittal 59, issued February 20, 2004. Section 701(b)(4) of the MMA also provides that updates for CY 2005 and CY 2006 will equal the applicable home health market basket percentage increase minus 0.8 percentage point. Lastly, section 701(b)(3) of the MMA revises the statute to provide that HH PPS rates for CY 2007 and any subsequent year will be updated by that year's home health market basket percentage increase (section 1895(b)(3)(B)(ii)(IV) of the Act).

II. Provisions of the Proposed Regulations

(If you choose to comment on issues in this section, please include the caption ''PROVISIONS OF THE PROPOSED REGULATIONS'' at the beginning of your comments.)

A. National Standardized 60-Day Episode Rate

Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under Medicare HH PPS is a national standardized 60-day episode rate. As set forth in 42 CFR 484.220, we adjust the national standardized 60-day episode rate by a case mix grouping and a wage index value based on the site of service for the beneficiary. The proposed CY 2005 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. We multiply the national 60-day episode rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

As required by section 1895(b)(3)(B) of the Act, we have updated the HH PPS rates annually in a separate **Federal Register** document. Section 484.225 sets forth the specific percentage update for fiscal years 2001, 2002, and 2003. To reflect the new statutory provisions enacted by section 701 of the MMA, in § 484.225, we are proposing to redesignate paragraph (d) as paragraph (g) and revising it to read as follows:

(g) For 2007 and subsequent calendar years, the unadjusted national rate is equal to the rate for the previous

calendar year increased by the applicable home health market basket index amount.

We are proposing to add new paragraphs (d), (e), and (f) to read as follows:

(d) For the last calendar quarter of 2003 and the first calendar quarter of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket index amount.

(e) For the last 3 calendar quarters of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket minus 0.8 percentage point.

(f) For each of calendar years 2005 and 2006, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous calendar year, increased by the applicable home health market basket minus 0.8 percentage point.

As described in section II.B.2 of this proposed rule, we are proposing to rebase and revise the home health market basket. As proposed, the labor related portion of the rebased and revised home health market basket would be 76.775 percent, and the non-labor portion would be 23.225 percent. We add the wage-adjusted portion to the non-labor portion yielding the case-mix and wage-adjusted 60-day episode rate subject to applicable adjustments.

For CY 2005, we are proposing to use again the design and case-mix methodology described in section III.G of the HH PPS July 3, 2000 final rule (65 FR 41192 through 41203). For CY 2005, we are proposing to base the wage index adjustment to the labor portion of the PPS rates on the most recent pre-floor and pre-reclassified hospital wage index as discussed in section III.C of this proposed rule.

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We propose to adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in section III.C of this proposed rule.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and (b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines the rate level at which Medicare will pay the claim for the fiscal period.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- A significant change in condition adjustment as set forth in § 484.205(e) and § 484.237.
- An outlier payment as set forth in § 484.205(f) and § 484.240.

This proposed rule would reflect the updated CY 2005 rates that would be effective January 1, 2005.

B. Rebasing and Revising of the Home Health Market Basket

1. Background

For CY 2005, section 1895(b)(3)(B) of the Act, as amended by MMA, requires the standard prospective payment amounts to be adjusted by a factor equal to the applicable home health market basket increase minus 0.8 percentage point.

Effective for cost reporting periods beginning on or after July 1, 1980, we developed and adopted an HHA input price index (that is, the home health ''market basket''). Although ''market basket'' technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term ''home health market basket'' used in this document refers to the HHA input price index.

The percentage change in the home health market basket reflects the average change in the price of goods and services purchased by HHAs in providing an efficient level of home health care services. We first used the home health market basket to adjust HHA cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For a greater discussion on the home health market basket, see the notice with comment period published in the **Federal Register** on February 15, 1980 (45 FR 10450, 10451), notice with comment period published in the **Federal Register** on February 14, 1995 (60 FR 8389, 8392), and notice with comment period published in **Federal Register** on July 1, 1996 (61 FR 34344, 34347). Beginning with FY 2002, we used the home health market basket to update payments under the home health PPS.

The home health market basket is a fixed-weight Laspeyres-type price index; its weights reflect the cost distribution for the base year while current period price changes are measured. The home health market basket is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then the proportion of total costs that each spending category represents is determined. These proportions are called cost or expenditure weights.

The second step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are drawn from publicly available statistical series published on a consistent schedule, preferably at least quarterly.

In the third and final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index level will produce rates of growth in the input price index.

We described the market basket as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base

period. As such, it measures ''pure'' price changes only. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are, by design, not considered.

2. Rebasing and Revising the Home Health Market Basket

We believe that it is desirable to rebase the home health market basket periodically so the cost category weights reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care. We based the cost category weights in the current home health market basket on FY 1993 data. We are proposing to rebase and revise the home health market basket to reflect FY 2000 Medicare cost report data, the latest available, thorough data on the structure of HHA costs.

The terms ''rebasing'' and ''revising,'' while often used interchangeably, actually denote different activities. Rebasing is the term used to define moving the base year for the structure of costs of an input price index (that is, in this rule, we are proposing to move the base year cost structure from FY 1993 to FY 2000). Revising is the term used to define changing data sources, cost categories, and/or price proxies used in the input price index.

For this proposed revising and rebasing, we modified several categories in the market basket cost structure. The major revision to the proposed revised and rebased market basket was the combining of the Administrative and General and Other Expenses cost categories. The proposed revised Administrative and General and Other Expenses cost category was disaggregated further into five separate cost categories (Telephone, Postage, Professional Fees, Other Products, and Other Services). The Paper and Printing cost category, which was broken out in the 1993-based market basket, is included in the proposed Other Products cost category.

With the exception of the price proxies for the proposed modified cost categories in the Administrative and General and Other cost category, we propose no further changes to any of the price proxies.

For this proposed rebased and revised market basket, we reviewed HHA expenditure data for the market basket cost categories. For each freestanding HHA, we reviewed Medicare cost reports whose cost reporting period began on or after October 1, 1999 and before October 1, 2000. We maintained our policy of using data from freestanding HHAs because they reflect the actual cost structure faced by HHAs. Expense data for a hospital-based HHA are affected by the allocation of overhead costs over the entire institution (including but not limited to hospital, hospital-based skilled nursing facility, hospital-based HHA). Due to the method of allocation, total expenses will be correct, but the individual components' expenses may be skewed. Therefore, if data from hospital-based HHAs were included, the resultant cost structure could be unrepresentative of the costs facing an average HHA.

Data on HHA expenditures for nine major expense categories (wages and salaries, employee benefits, transportation, operation and maintenance, administrative and general, insurance, fixed capital, movable capital, and a residual ''all other'') were tabulated from the FY 2000 Medicare HHA cost reports. Since prescription drugs and durable medical equipment are not payable under the HH PPS, we excluded those items from the home health market basket. Expenditures for contract services were also tabulated from these FY 2000 Medicare HHA cost reports. After totals for these major cost categories were edited to remove reports where the data were deemed unreasonable (for example, when total costs were not greater than zero), we then determined the proportion of total costs that each category represents. The proportions represent the major rebased home health market basket weights.

We determined the weights for subcategories (Telephone, Postage, Professional Fees, Other Products, and Other Services) within the combined Administrative and General and Other Expenses using the latest available (1997 benchmark) U.S. Department of Commerce, Bureau of Economic Analysis (BEA) Input-Output Table, from which we extracted data for HHAs. The BEA Input-Output table, which is updated at 5-year intervals, was most recently described in the Survey of Current Business article, ''Benchmark Input-Output Accounts of the U.S., 1997'' (December 2002). These data were aged from 1997 to 2000 using relevant price changes.

This work resulted in the identification of 12 separate cost categories, the same number found in the 1993-based home health market basket. The differences between the major categories for the proposed 2000-based index and those used for the current 1993-based index are summarized in Table 1. We have allocated the Contracted Services weight to the Wages and Salaries, Employee Benefits, and Administrative and General and Other Expenses cost categories in the proposed 2000-based index as we did in the 1993-based index.

TABLE 1.—COMPARISON OF 1993 AND PROPOSED 2000-BASED HOME HEALTH MARKET BASKET MAJOR COST CATEGORIES AND WEIGHTS

Cost categories	1993-Based home health market basket	Proposed 2000-based home health market basket
Wages and Salaries, including allocated contract services' labor	64.226	65.766
Employee Benefits, including allocated contract services' labor	13.442	11.009
All Other Expenses including allocated contract services' labor	22.332	23.225
Total	100.000	100.000

The complete proposed 2000-based cost categories and weights are listed in Table 2.

TABLE 2.—COST CATEGORIES, WEIGHTS, AND PRICE PROXIES IN PROPOSED 2000-BASED HOME HEALTH MARKET BASKET

Cost categories	Weight	Price proxy
Compensation, including allocated contract services' labor	76.775	
Wages and Salaries, including allocated contract services' labor.	65.766	Proposed Home Health Occupational Wage Index.
Employee Benefits, including allocated contract services' labor.	11.009	Proposed Home Health Occupational Benefits Index.
Operations & Maintenance	0.825	CPI Fuel & Other Utilities.
Administrative & General & Other Expenses including allocated contract services' labor*.	16.633	
Telephone	0.850	CPI Telephone Services.
Postage	0.563	CPI Postage.
Professional Fees*	1.405	ECI for Compensation for Professional and Technical Workers.
Other Products*	6.419	CPI All Items Less Food and Energy.
Other Services*	7.396	ECI for Compensation for Service Workers.
Transportation	2.744	CPI Private Transportation.
Capital-Related	3.023	
Insurance	0.275	CPI Household Insurance.
Fixed Capital	1.777	CPI Owner's Equivalent Rent.
Movable Capital	0.971	PPI Machinery & Equipment.
Total	100.000	**

* New break-out in cost structure when compared with the 1993-Based home health market basket.
** Figures may not sum to total due to rounding.
Note: Price Proxy explanations are described below.

After we computed the 2000 cost category weights for the proposed rebased home health market basket, we selected the most appropriate wage and price indexes to proxy the rate of change for each expenditure category. These price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• *Employment Cost Indexes*—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in skill mix. ECIs are superior to average hourly earnings as price proxies for input price indexes for two reasons: (a) They measure pure price change; and (b) they are available by occupational groups, not just by industry.

• *Consumer Price Indexes*—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes are used when the expenditure is more similar to that of a purchase at the retail level rather than at the wholesale level, or if no appropriate Producer Price Indexes (PPIs) were available.

• *Producer Price Indexes*—PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment is used rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that HHAs purchase at wholesale levels. These fixed-weight indexes are a measure of price change at the producer or at the intermediate stage of production.

As part of the revising and rebasing of the home health market basket, we are proposing to rebase the home health blended wage and salary index and the home health blended benefits index. We would use these blended indexes as price proxies for the wages and salary and the employee benefits portions of the proposed 2000-based home health market basket, as we did in the 1993-based home health market basket. The price proxies for these two cost categories are the same as those used in the 1993-based home health market basket with occupational weights reflecting the FY 2000 occupational mix in HHAs. These proxies are a combination of internal (health-industry specific) and external (economy-wide) proxies. The supply and demand relationships for certain professional-technical occupations, such as registered nurses, may be more appropriately reflected in the blended indicators of compensation changes for professional and technical employees.

3. Price Proxies Used To Measure Cost Category Growth

a. Wages and Salaries, including an allocation for contract services' labor: For measuring price growth in the 2000-based home health market basket, as we did in the 1993-based index, five price proxies would be applied to the four occupational subcategories within the wages and salaries component, and would be weighted to reflect the HHA occupational mix. This approach was used because there is not a wage proxy for home health care workers that reflects only wage changes and not both wage and skill mix changes. The Professional and Technical occupational subcategory is represented by a 50–50 blend of hospital industry and economy-wide price proxies. Therefore, there are five price proxies used for the four occupational subcategories. The percentage change in the blended wages and salaries price is applied to the wages and salaries component of the home health market basket, which is described in Table 3.

TABLE 3.—PROPOSED HOME HEALTH OCCUPATIONAL WAGES AND SALARIES INDEX

[Wages and salaries component of the proposed 2000-based home health market basket]

Cost category	Weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for contract services' labor.	53.816	• 50 percent ECI for Wages & Salaries in Private Industry for Professional, Specialty & Technical Workers. • 50 percent ECI for Wages & Salaries for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for contract services' labor.	7.431	ECI for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for contract services' labor	6.822	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for contract services' labor	31.931	ECI for Wages & Salaries in Private Industry Service Occupations.
Total	100.000	

We experimented with using a different blend of ECIs for wages and salaries. In addition to using 50 percent professional and technical workers and 50 percent hospital workers for the professional/technical workers category, we also tried using—

• 100 percent of the professional and technical ECI;

• 50 percent professional/technical and 50 percent health services workers; and

• 100 percent health services workers.

There was very little difference between the three wage and salary blends and the proposed price proxy. The average difference from 1998 to 2002 between the price proxy chosen and the experimental blends was at most 0.2 percentage point in any given year. We did not propose a change from our current blended measure because we believe it reflects the competition between HHAs and hospitals for registered nurses, while still capturing the overall wage trends for professional and technical workers.

b. Employee Benefits, including an allocation for contract services' labor: For measuring employee benefits price growth in the 2000-based home health market basket, price proxies are applied to the four occupational subcategories within the employee benefits component, weighted to reflect the home health occupational mix. The professional and technical occupational subcategory is represented by a blend of hospital industry and economy-wide price proxies. Therefore, there are five price proxies for four occupational subcategories. The percentage change in the blended price of home health employee benefits is applied to this component, which is described in Table 4.

TABLE 4.—PROPOSED HOME HEALTH OCCUPATIONAL BENEFITS INDEX

[Employee benefits component of the proposed 2000-based home health market basket]

Cost category	Weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for contract services' labor.	53.492	• 50 percent ECI for Benefits in Private Industry for Professional, Specialty & Technical Workers. • 50 percent ECI for Benefits for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for contract services' labor.	7.232	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for contract services' labor	6.914	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for contract services' labor	32.362	ECI for Benefits in Private Industry Service Occupations.
Total	100.000	

As we did for wages and salaries, we analyzed three different alternatives to use as a proxy for professional/technical benefits. The result of this analysis was similar to that found for wages and salaries. Therefore, we are proposing to continue to use the same 50–50 split for benefits for professional and technical workers (50 percent hospital workers and 50 percent professional and technical workers) as we did in the 1993-based market basket.

c. Operations and Maintenance: The percentage change in the price of Fuel and Other Utilities as measured by the Consumer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

d. Telephone: The percentage change in the price of Telephone Service as measured by the Consumer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

e. Postage: The percentage change in the price of Postage as measured by the Consumer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

f. Professional Fees: The percentage change in the price of Professional Fees as measured by the ECI for Compensation for Professional and Technical Workers is applied to this component. This category was not broken out separately in the 1993-based home health market basket.

g. Other Products: The percentage change in the price for all items less food and energy as measured by the Consumer Price Index is applied to this component. This category was not broken out separately in the 1993-based home health market basket. It includes paper and printing that was a separate cost category in the 1993-based home health market basket.

h. Other Services: The percentage change in the Employment Cost Index for Compensation for Service Workers is applied to this component. This category was not broken out separately

in the 1993-based home health market basket.

i. Transportation: The percentage change in the price of Transportation as measured by the Consumer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

j. Insurance: The percentage change in the price of Household Insurance as measured by the Consumer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

k. Fixed Capital: The percentage change in the price of Owner's Equivalent Rent as measured by the Consumer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

l. Movable Capital: The percentage change in the price of Machinery and Equipment as measured by the Producer Price Index is applied to this component. The same proxy was used for the 1993-based market basket.

As we did in the 1993-based home health market basket, we allocated the Contract Services' share of home health agency expenditures among Wages and Salaries, Employee Benefits, Administrative and General and Other Expenses. This method reflects the distribution of expenditures for contract services as indicated in the Medicare Cost Report.

Table 5 summarizes the proposed 2000-based proxies and compares them to the 1993-based proxies.

TABLE 5.—COMPARISON OF PRICE PROXIES USED IN THE 1993-BASED AND THE PROPOSED 2000-BASED HOME HEALTH MARKET BASKETS

Cost category	1993-based price proxy	2000-based proposed price proxy
Compensation, including allocated contract services' labor:		
Wages and Salaries, including allocated contract services' labor.	Home Health Agency Occupational Wage Index.	Same.
Employee Benefits, including allocated contract services' labor.	Home Health Agency Occupational Benefits Index.	Same.
Operations and Maintenance	CPI-Fuel and Other Utilities	Same.
Adminstrative & General & Other Expenses, including allocated contract services' labor:		
Telephone	CPI–U Telephone	Same.
Postage	CPI–U Postage	Same.
Professional Fees	N/A	ECI for Compensation for Professional and Technical Workers.
Other Products	N/A	CPI–U for All Items Less Food and Energy.
Other Services	DN/A	ECI for Compensation for Service Workers.
Other Administrative and General	CPI Services	N/A.
Paper & Printing	CPI for Household Paper Products & Stationary Supplies.	N/A.
Transportation	CPI Transportation	Same.
Capital-Related:		
Insurance	CPI Household Insurance	Same.
Fixed Capital	CPI Owner's Equivalent Rent	Same.
Movable Capital	PPI Machinery and Equipment	Same.
Other Expenses, including allocated contract services' labor	CPI All Items Less Food and Energy	N/A.
Contract Services	Contained within Wages & Salaries, Employee Benefits, Administrative & General, Other Expenses; see those price proxies.	Contained within Wages & Salaries, Employee Benefits, Administrative & General & Other Expenses; see those price proxies.

4. Rebasing Results

A comparison of the yearly changes from FY 1999 to FY 2002 for the 1993-based home health market basket and the proposed 2000-based home health market basket is shown in Table 6. The average annual increase in the two market baskets is similar, and in no year is the difference as much as 0.1 percentage point.

TABLE 6.—COMPARISON OF THE 1993-BASED HOME HEALTH MARKET BASKET AND THE PROPOSED 2000-BASED HOME HEALTH MARKET BASKET, PERCENT CHANGE, 1999–2002

Fiscal years beginning October 1	Home health market basket, 1993-based	Proposed home health market basket, 2000-based	Difference (proposed 2000-based less 1993-based)
Historical: October 1998, FY 1999	2.8	2.8	0.0
October 1999, FY 2000	3.6	3.5	−0.1
Ocobter 2000, FY 2001	4.2	4.1	−0.1
October 2001, FY 2002	3.6	3.6	0.0
Average Change: 1999–2002	3.6	3.5	−0.1

Source: Global Insight, Inc, 4th Qtr, 2003; @USMACRO/CONTROL1103 @CISSIM/TL1103.SIM.

Section 1895(b)(3)(B) of the Act, as amended by MMA, requires the standard prospective payment amounts to be paid on a calendar year basis for 2004 and any subsequent year. Previous market basket updates were calculated on a fiscal year basis. Table 7 shows that the forecasted rate of growth for CY 2005, beginning January 1, 2005, for the proposed rebased and revised home health market basket is 3.3 percent, while the forecasted rate of growth for the current 1993-based home health market basket is also 3.3 percent. As previously mentioned, we rebase the home health market basket periodically so the cost category weights continue to reflect changes in the mix of goods and services that HHAs purchase in furnishing home health care.

TABLE 7.—FORECASTED ANNUAL PERCENT CHANGE IN THE CURRENT AND PROPOSED REVISED AND REBASED HOME HEALTH MARKET

Calendar year beginning January 1	Home health market basket, 1993-based	Proposed home health market basket, 2000-based	Difference (proposed 2000-based less 1993-based)
January 2005, CY 2005	3.3	3.3	0.0

Source: Global Insight, Inc, 4th Qtr, 2003; @USMACRO/CONTROL1103 @CISSIM/TL1103.SIM.

Table 8 shows the percent changes for CY 2005 for each cost category in the home health market basket.

TABLE 8.—CY 2005 FORECASTED ANNUAL PERCENT CHANGE FOR ALL COST CATEGORIES IN THE PROPOSED 2000-BASED HOME HEALTH MARKET BASKET

Cost categories	Weight	Price proxy	Forecasted annual percent change for CY 2005
Total	100.000		3.3
Compensation	76.775		3.6
Wages and Salaries	65.766	Proposed Home Health Occupational Wage Index.	3.5
Employee Benefits	11.009	Proposed Home Health Occupational Benefits Index.	4.3
Operations & Maintenance	0.825	CPI Fuel & Other Utilities	0.0
Adminsitrative & General & Other Expenses	16.633		2.5
Telephone	0.850	CPI Telephone Services	0.8
Postage	0.563	CPI Postage	3.7
Professional Fees*	1.405	ECI for Compensation for Professional and Technical Workers.	3.7
Other Products*	6.419	CPI All Items Less Food and Energy	1.3
Other Services*	7.396	ECI for Compensation for Service Workers	3.6
Transportation	2.744	CPI Private Transportation	2.2
Capital-Related	3.023		1.8
Insurance	0.275	CPI Household Insurance	3.2
Fixed Capital	1.777	CPI Owner's Equivalent Rent	2.4
Movable Capital	0.971	PPI Machinery & Equipment	0.3

* New break-out in cost structure when compared with the 1993-based home health market basket.
Source: Global Insight, Inc, 4th Qtr, 2003; @USMACRO/CONTROL1103 @CISSIM/TL1103.SIM.

5. Labor-Related Share

In the 1993-based home health market basket the labor-related share was 77.668 percent while the remaining nonlabor-related share was 22.332 percent. In the proposed revised and rebased home health market basket, the labor-related share would be 76.775 percent. The labor-related share includes wages and salaries and employee benefits. The proposed nonlabor-related share would be 23.225 percent. The lower share of labor-related costs in 2000 may reflect in part the changing cost structure associated with the implementation of the prospective payment system for HHAs.

Table 9 details the components of the labor-related share for the 1993-based and proposed 2000-based home health market baskets.

TABLE 9.—LABOR-RELATED SHARE OF CURRENT AND PROPOSED HOME HEALTH MARKET BASKETS

Cost category	1993-based market basket weight	Proposed 2000-based market basket weight
Wages and Salaries	64.226	65.766
Employee Benefits	13.442	11.009
Total Labor Related	77.668	76.775

TABLE 9.—LABOR-RELATED SHARE OF CURRENT AND PROPOSED HOME HEALTH MARKET BASKETS—Continued

Cost category	1993-based market basket weight	Proposed 2000-based market basket weight
Total Non-Labor Related	22.332	23.225

C. Proposed CY 2005 Update to the Home Health Market Basket Index

Section 1895(b)(3)(B) of the Act, as amended by section 701 of the MMA, requires for CY 2005 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket increase minus 0.8 percentage point. As previously noted, we are proposing to amend the regulations in § 484.225 to reflect this requirement.

• *Proposed CY 2005 Adjustments*

In calculating the annual update for the CY 2005 60-day episode rates, we are proposing to first look at the CY 2004 rates as a starting point. The CY 2004 national 60-day episode rate, as modified by section 701 of the MMA and implemented through Pub. 100–20 One Time Notification, Transmittal 59 issued February 20, 2004 is $2,213.37.

In order to calculate the CY 2005 national 60-day episode rate, we are proposing to multiply the CY 2004 national 60-day episode rate ($2,213.37) by the applicable home health market basket update of 3.3 percent for CY 2005 minus 0.8 percentage point.

We would increase the CY 2004 60-day episode payment rate by the proposed home health market basket increase (3.3 percent) minus 0.8 percentage point ($2,213.37 x 2.5 percent) to yield the proposed updated CY 2005 national 60-day episode rate ($2,268.70) (see Table 10 below).

TABLE 10.—PROPOSED NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET CY 2005, MINUS 0.8 PERCENTAGE POINT, BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Total prospective payment amount per 60-day episode for CY 2004 (as of 04/04/04)	Multiply by the applicable home health market basket increase (3.3 percent) minus 0.8 percentage point	Proposed CY 2005 updated national 60-day episode rate
$2,213.37	× 1.025	$2,268.70

• *National Per-visit Amounts Used to Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations*

As discussed previously in this proposed rule, the policies governing the LUPAs and outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue during CY 2005. In calculating the annual update for the CY 2005 national per-visit amounts we use to pay LUPAs and to compute the imputed costs in outlier calculations, we are proposing to look again at the CY 2004 rates as a starting point. We then are proposing to multiply those amounts by the proposed home health market basket increase minus 0.8 percentage point for CY 2005 to yield the updated per-visit amounts for each home health discipline for CY 2005. (See Table 11 below.)

TABLE 11.—PROPOSED NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE APPLICABLE HOME HEALTH MARKET BASKET INCREASE FOR CY 2005, MINUS 0.8 PERCENTAGE POINT, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Home health discipline type	Final per-visit amounts per 60-day episode for CY 2004 for LUPAs (as of 04/01/04)	Multiply by the applicable home health market basket (3.3 percent) minus 0.8 percentage point	Proposed per-visit payment amount per discipline for CY 2005 for LUPAs
Home Health Aide	$43.75	× 1.025	$44.84
Medical Social Services	154.89	× 1.025	158.76
Occupational Therapy	106.36	× 1.025	109.02
Physical Therapy	105.65	× 1.025	108.29
Skilled Nursing	96.63	× 1.025	99.05
Speech-Language Pathology	114.80	× 1.025	117.67

D. Proposed Update to the Outlier Fixed Dollar Loss Ratio

Outlier payments are payments made in addition to regular 60-day case-mix and wage-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments are made for episodes whose estimated cost exceeds a threshold amount. The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group, PEP adjustment, or total SCIC adjustment is defined as the 60-day episode payment amount, PEP adjustment, or total SCIC adjustment for that group plus a fixed dollar loss amount. Both components of the outlier threshold are wage-adjusted.

The wage-adjusted fixed dollar loss amount (FDL) represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. The FDL is computed by

multiplying the wage-adjusted 60-day episode payment amount by the fixed dollar loss ratio, which is a proportion expressed in terms of the national standardized episode payment amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated costs beyond the wage-adjusted threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

Section 1895(b)(5) of the Act requires that estimated total outlier payments are no more than 5 percent of total estimated HH PPS payments. In response to the concerns about potential financial losses that might result from unusually expensive cases expressed in comments to the October 28, 1999 proposed rule (64 FR 58133), the July 2000 final rule set the target for estimated outlier payments at the 5 percent level. The fixed dollar loss ratio and the loss-sharing ratio were then selected so that estimated total outlier payments would meet the 5 percent target.

For a given level of outlier payments, there is a trade-off between the values selected for the fixed dollar loss ratio and the loss-sharing ratio. A high fixed dollar loss ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower fixed dollar loss ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must be lower. As a result of public comments on the October 28, 1999 proposed rule, in our July 2000 final rule, we made the decision to attempt to cover a relatively high proportion of the costs of outlier cases for the most expensive episodes that would qualify for outlier payments within the 5 percent constraint.

We chose a value of 0.80 for the loss-sharing ratio, which is relatively high, but which preserves incentives for agencies to attempt to provide care efficiently for outlier cases. It is also consistent with the loss-sharing ratios used in other Medicare PPS outlier policies. Having made this decision, we estimated the value of the fixed dollar loss ratio that would yield estimated total outlier payments that were 5 percent of total home health PPS payments. The resulting value for the fixed dollar loss ratio was 1.13.

Analysis of 100 percent of CY 2001 home health claims data reflects that outlier episodes represent approximately 3 percent of total episodes and 3 percent of total HH PPS payments. Preliminary analysis of CY 2002 home health claims data indicates no change in that parameter. Therefore, it is appropriate to update the outlier policy based on more recent data than were available when the July 2000 final rule for HH PPS was developed. We are proposing to make no change in the 5 percent target for outlier expenditures as a percent of total HH PPS payments. In addition, we are not proposing to change the loss-sharing ratio of 0.80. Further, section 1895(b)(3)(C) of the Act requires that the episode payment amounts be adjusted to effectively pay for outlier payments within the same level of estimated total spending. We are not proposing to change the adjustment to the episode payment amounts for outlier payments. Therefore, the proposed update would only change the fixed dollar loss ratio, and in turn, the fixed dollar loss amount.

We performed data analysis on CY 2001 HH PPS analytic data to update the fixed dollar loss ratio to enable the total estimated outlier payments to be 5 percent of total HH PPS payments. The results of this analysis indicate that a fixed dollar loss ratio of 0.72 is consistent with the existing loss-sharing ratio of 0.80 and a target percentage of estimated outlier payments of 5 percent. Consequently, we are proposing to update the fixed dollar loss ratio from the current ratio of 1.13 to the fixed dollar loss ratio of 0.72. Reducing the fixed dollar loss ratio from 1.13 to 0.72 would allow approximately 6.5 percent of episodes to qualify for outlier payments. The estimated 6.5 percent outlier episodes is greater than the 3.0 percent of episodes that currently qualify for outlier payments, and is about the same as the 6.8 percent for outlier episodes that we estimated in our July 2000 final rule.

Expressed in terms of a fixed dollar loss amount, the proposed fixed dollar loss ratio of 0.72 implies that providers would absorb approximately $1,633 of their costs (before wage adjustment), in addition to their loss-sharing portion of the estimated cost in excess of the outlier threshold. This fixed dollar loss amount of approximately $1,633 is computed by multiplying the proposed standard 60-day episode payment amount ($2,268.70) by the proposed fixed dollar loss ratio (0.72). Using the current fixed dollar loss ratio (1.13), the fixed dollar loss amount would be approximately $2,564 ($2,268.70 * 1.13). We believe that our proposed fixed dollar loss ratio of 0.72 preserves a reasonable degree of cost sharing, while allowing a greater number of episodes to qualify for outlier payments. In the final rule, following publication of this proposed rule, we plan to update our estimate of the fixed dollar loss ratio using the most current, complete year of HH PPS data available.

The following analytical tables 12(a) through 12(f), derived from analysis of CY 2001 home health claims data, characterize outlier episodes, and depict the differences between outlier and non-outlier episodes with regards to home health resource groups (HHRGs) and visit disciplines. Tables 12(a) through 12(f) illustrate various characteristics of outlier episodes. Outlier episodes are more likely to be of a higher clinical severity than are non-outlier episodes. Functional status levels are, however, very similar across all types of episodes. Our analysis further shows that outlier episodes are less likely to be high in therapy use than non-outlier episodes. In addition, the top high volume HHRGs seen in outlier episodes are also seen as high volume HHRGs in non-outlier episodes. Finally, our analysis also shows that skilled nursing visits are highly prevalent in outlier episodes. This analysis excludes LUPAs, as those episodes inherently do not involve the use of HHRGs and hence are not paid based on HHRGs. In the final rule, we will confirm all data analysis based on 100 percent home health claims for CY 2002 and available preliminary CY 2003 home health claims data.

TABLE 12–a.—SEVERITY LEVEL COMPARISON OF HHRG'S CLINICAL DOMAIN IN OUTLIER & NON-OUTLIER EPISODES

Clinical domain severity level	Percentage of outlier episodes	Percentage of non-outlier episodes
C1	9	20
C2	19	33
C3*	52	36
C4*	20	11

* Outlier episodes are more likely to be of a higher clinical severity level than are non-outlier episodes.

TABLE 12–b.—SEVERITY LEVEL COMPARISON OF HHRG'S FUNCTIONAL DOMAIN IN OUTLIER AND NON-OUTLIER EPISODES

Functional domain severity level	Percentage of outlier episodes	Percentage of non-outlier episodes
F0	6	7
F1	22	25
F2	47	43
F3	13	13
F4	12	12

Note: Functional status levels are similar for both outlier and non-outlier episodes.

TABLE 12–c.—HIGH-THERAPY EPISODE COMPARISON IN OUTLIER AND NON-OUTLIER EPISODES

Type of episode	Percentage of outlier episodes	Percentage of non-outlier episodes
Episodes with 10 or more therapy visits	11*	24
All Other Episodes	89	76

*Outlier episodes are less likely to be episodes with high therapy use (at least 10 therapy visits) than are non-outlier episodes.

TABLE 12–d.—TOP 10 HHRG COMPARISON IN OUTLIER AND NON-OUTLIER EPISODES

HHRG (weight)	Outlier rank	Percentage of outlier episodes	Non-outlier rank	Percentage of non-outlier episodes
C2F2S0	1	20.3	2	10.7
C2F1S0	2	12.4	6	5.1
C1F2S0	3	6.1	1	11.3
C3F2S0	4	5.8	13	2.4
C1F1S0	5	5.3	3	6.4
C3F4S0	6	5.0	8	3.9
C2F3S0	7	4.8	11	3.2
C2F4S0	8	3.8	10	3.5
C3F0S0	9	3.6	23	1.3
C3F3S0	10	3.3	20	1.4
C0F2S0	11	3.1	4	6.0
C0F1S0	12	2.6	5	5.7
C2F2S1	15	1.7	7	4.1
C1F2S2	18	1.0	9	3.7
Top 10 HHRGs, Outlier Episodes		70.4		
Top 10 HHRGs, Non-Outlier Episodes				60.4

Note: Except for two HHRGs (C3F0S0 & C3F3S0), the top 10 HHRGs that occur in outlier episodes are also within the top 13 HHRGs in non-outlier episodes.

TABLE 12–e.—PERCENTAGES OF VISIT TYPES IN OUTLIER AND NON-OUTLIER EPISODES

Home health visits	Outlier episodes	Non-outlier episodes
Average Total Visits	84.5	19.7
Percentage of Total Visits:		
Skilled Nursing Visits [1]	75.3	45.1
Home Health Aide Visits	18.6	26.3
Physical Therapy Visits [2]	3.8	22.8
Occupational Therapy Visits [2]	1.4	4.0
Speech Therapy Visits [2]	0.5	0.8
Medical Social Visits	0.4	1.0

[1] Skilled nursing visits make up a significantly greater percentage of total visits in outlier episodes than in non-outlier episodes.
[2] Therapy visits are a substantially smaller percentage of total visits in outlier episodes than in non-outlier episodes.

TABLE 12–f.—PROBABILITY OF AT LEAST 1 OCCURRENCE OF A PARTICULAR TYPE OF VISIT IN AN EPISODE FOR OUTLIER AND NON-OUTLIER EPISODES

Home health visits	Outlier episodes (percent)	Non-outlier episodes (percent)
Probability of at least 1 service occurring:		
Skilled Nursing Visits [1]	99.8	89.3
Home Health Aide Visits [2]	44.6	35.6
Physical Therapy (PT) Visits [3]	27.9	48.6
Occupational Therapy (OT) Visits	11.6	14.4
Speech Therapy Visits	3.4	2.7
Medical Social Visits	16.4	12.5

TABLE 12–f.—PROBABILITY OF AT LEAST 1 OCCURRENCE OF A PARTICULAR TYPE OF VISIT IN AN EPISODE FOR OUTLIER AND NON-OUTLIER EPISODES—Continued

Home health visits	Outlier episodes (percent)	Non-outlier episodes (percent)
Any Therapy (PT, OT, Speech)	29.4	50.4

[1] Skilled nursing visits are almost always present in outlier episodes.
[2] Home health aide visits occur in slightly less than 50 percent of outlier episodes.
[3] Physical Therapy is less likely to occur in an outlier episode than in a non-outlier episode.

E. Rural Add-On as Required by the MMA

As discussed in section I.D. of this preamble, section 421 of the MMA requires, for home health services furnished in a rural area with respect to episodes and visits ending on or after April 1, 2004 and before April 1, 2005, that we increase by 5 percent the payment amount that otherwise would be made for these services. The statute waives budget neutrality related to this provision. By statute, the 5 percent rural add-on applies to home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) for episodes and visits ending on or after April 1, 2004 and before April 1, 2005. Therefore, the 5 percent rural add-on ends after the first quarter of CY 2005 for episodes and visits ending before April 1, 2005. After the rural add-on is determined, the applicable case-mix and wage index adjustment is then subsequently applied for the provision of home health services where the site of service is the non-Metropolitan Statistical Area (MSA) of the beneficiary. Similarly, the applicable wage index adjustment is subsequently applied to the LUPA per visit amounts adjusted for the provision of home health services where the site of service for the beneficiary is a non-MSA area. We implemented this provision for CY 2004 on April 1, 2004 through Pub. 100–20 One Time Notification, Transmittal 59 issued February 20, 2004. The CY 2005 5 percent rural add-on is noted in tables below.

TABLE 13.—PROPOSED CY 2005 RURAL ADD-ON TO 60-DAY EPISODE PAYMENT AMOUNTS ENDING ON OR AFTER APRIL 1, 2004 AND BEFORE APRIL 1, 2005 FOR BENEFICIARIES WHO RESIDE IN A NON-MSA AREA BEFORE CASE-MIX ADJUSTMENT, WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY OR APPLICABLE PAYMENT ADJUSTMENT

Proposed total prospective payment amount per 60-day episode for CY 2005	5 percent rural add-on	Proposed CY 2005 final payment amount per 60-day episode ending before April 1, 2005 for a beneficiary who resides in a non-MSA area
$2,268.70	× 1.05	$2,382.14

TABLE 14.—PROPOSED CY 2005 ADD-ON TO LUPA PER-VISIT AMOUNTS FOR VISITS ENDING ON OR AFTER APRIL 1, 2004 AND BEFORE APRIL 1, 2005, BEFORE WAGE INDEX ADJUSTMENT BASED ON THE SITE OF SERVICE OF THE BENEFICIARY WHO RESIDES IN A NON-MSA AREA OR PAYMENT APPLICABLE ADJUSTMENT

Home health discipline type	Proposed per-visit payment amounts per 60-day episode for CY 2005 for LUPAs	5 percent rural add-on	Proposed CY 2005 per-visit payment amounts per 60-day episode ending before April 1, 2005 for LUPAs for a beneficiary who resides in a non-MSA area
Home Health Aide	$44.84	× 1.05	$47.08
Medical Social Services	158.76	× 1.05	166.70
Occupational Therapy	109.02	× 1.05	114.47
Physical Therapy	108.29	× 1.05	113.70
Skilled Nursing	99.05	× 1.05	104.00
Speech-Language Pathology	117.67	× 1.05	123.55

F. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under HH PPS to account for area wage differences. We apply the appropriate wage index value to the labor portion of the HH PPS rates based on the geographic area in which the beneficiary received home health services. We determine each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). We recognize that on June 6, 2003, the Office of Management and Budget (OMB) issued OMB Bulletin No. 03–04, announcing revised definitions of Metropolitan Statistical Areas, and new definitions of Micropolitan Statistical Areas, and Combined Statistical Areas. A copy of the Bulletin

may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html*. These new definitions will not be applied to the CY 2005 wage index used in this proposed update to the HH payment rates.

On May 18, 2004, we published a proposed rule entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and FY 2005 Rates'' (69 FR 28195), which discusses some of the issues associated with using these new definitions and proposes to use these new definitions for the Inpatient Hospital PPS for FY 2005. We believe it is appropriate to wait until the public comments on that proposed rule have been submitted and analyzed before we consider proposing any new labor market definitions in the home health context.

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Again, as discussed in the July 3, 2000 final rule, we are proposing to use the pre-floor and pre-reclassified hospital wage index to adjust the labor portion of the HH PPS rates based on the geographic area in which the beneficiary receives the home health services. We believe the use of the pre-floor and pre-reclassified hospital wage index results in the appropriate adjustment to the labor portion of the costs as required by statute. For this update to the CY 2005 home health payment rates, we propose to continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of the final rule. Due to the mandated change from a fiscal year update cycle to that of a calendar year update cycle, the most recent pre-floor and pre-reclassified hospital wage index available for this update of the CY 2005 home health payment rates will be that of the 2005 pre-floor/pre-reclassified hospital wage index.

Under previous fiscal year updates, the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication of the HH PPS fiscal year update was that of the previous year. Beginning with the CY 2005 update to home health payment rates, the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication will be that of the current year. Consequently, for our proposed CY 2005 update to the home health payment rates, we propose to continue to use the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication. We recognize that this change to a calendar year update cycle results in using the current year's wage index values. See addenda A and B of this proposed rule, respectively, for the proposed rural and urban hospital wage indexes. Furthermore, we have added an addendum C that shows a side-by-side comparison of the FY 2003 pre-floor and pre-reclassified hospital wage index and proposed CY 2005 pre-floor and pre-reclassified hospital wage index for the CY 2005 HH PPS update proposed rule. For HH PPS rates addressed in this proposed rule, we are using a preliminary 2005 pre-floor and pre-reclassified hospital wage index. We will incorporate updated wage data for the 2005 pre-floor and pre-reclassified hospital wage index in the final rule for the CY 2005 HH PPS update.

III. Collection of Information Requirements

(If you choose to comment on issues in this section, please include the caption ''COLLECTION OF INFORMATION REQUIREMENTS'' at the beginning of your comments.)

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of the preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

(If you choose to comment on issues in this section, please include the caption ''REGULATORY IMPACT ANALYSIS'' at the beginning of your comments.)

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The update set forth in this proposed rule would apply to Medicare payments under HH PPS in CY 2005. Accordingly, the following analysis describes the impact in CY 2005 only. We estimate that there would be an additional $270 million in CY 2005 expenditures attributable to the CY 2005 proposed market basket (3.3 percent), minus 0.8 percentage point, an estimated increase of 2.5 percent.

Section 421 of the MMA provides for a 5 percent increase in home health payments to rural providers for episodes and visits ending after April 1, 2004 and before April 1, 2005. This increase is not subject to budget neutrality. Consequently, this increase in payments to rural providers will result in an estimated increase in expenditures of $20 million in FY 2004 and $100 million in FY 2005.

Section 701 of the MMA includes a provision that changes the update cycle for HH PPS, and thus the home health market basket update, from a fiscal year basis to that of a calendar year basis in 2004. This results in a projected reduction in expenditures of approximately $90 million in FY 2005.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less annually (for details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $11.5 million or less in 1 year. Individuals and States are not included in the definition of a small

entity. As stated above, this proposed rule would provide an update to all HHAs for CY 2005 as required by statute. This proposed rule would have a significant positive effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area (MSA) and has fewer than 100 beds. We have determined that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We believe this proposed rule would not mandate expenditures in that amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this proposed rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

In accordance with the requirements of section 1895(b)(3) of the Act, we publish an update for each subsequent fiscal year that will provide an update to the payment rates. Section 1895(b)(3)(B) of the Act, as amended by section 701 of the MMA, requires us, for CY 2005, to increase the prospective payment amounts by the applicable home health market basket increase minus 0.8 percentage point. We estimate that with a proposed home health market basket of 3.3 percent minus 0.8 percentage point, the estimated proposed increase for CY 2005 is 2.5 percent.

1. Effects on the Medicare Program

This proposed rule would merely provide a percentage update to all Medicare HHAs. Therefore, we have not furnished any impact tables. We would increase the payment to each Medicare HHA equally by the home health market basket update for CY 2005, minus 0.8 percentage point, as required by statute. There is no differential impact among provider types. The impact is in the aggregate. We can show the impact that the proposed CY 2005 wage index would have on providers. Addendum C shows a side-by-side comparison of the FY 2003 pre-floor and pre-reclassified hospital wage index and the proposed CY 2005 pre-floor and pre-reclassified hospital wage index for the CY 2005 HH PPS update proposed rule. We estimate that there would be an additional $270 million in CY 2005 expenditures attributable to the CY 2005 proposed market basket (3.3 percent), minus 0.8 percentage point, estimated increase resulting in 2.5 percent. Thus, the anticipated expenditures outlined in this proposed rule would exceed the $100 million annual threshold for a major rule as defined in Title 5, USC, section 804(2).

We estimate that the applicable home health market basket (minus 0.8 percentage point) increase of 2.5 percent for CY 2005 applies to all Medicare-participating HHAs. We do not believe there is a differential impact due to the aggregate nature of the update.

TABLE 15

CY 2005 update to home health PPS rates required by the act	Additional CY 2005 Medicare home health estimated expenditures due to annual update required by law
Section 1895(b)(3)(B) of the Act requires HH PPS rates increased by applicable home health market basket increase (3.3 percent) minus 0.8 percentage point, yielding 2.5 percent	[1] $270

Source: President's FY 2004 Budget.
[1] In millions.

2. Effects on Providers

This proposed rule would have a positive effect on providers of Medicare home health services by increasing their rate of Medicare payment. We do not anticipate specific effects on other providers. This proposed rule would reflect the statutorily required annual update to the HH PPS rates. We do not believe there is a differential impact due to the consistent and aggregate nature of the update.

C. Alternatives Considered

As discussed in section II, this proposed rule reflects an annual update to the HH PPS rates as required by statute. We believe that the statute provides no latitude for alternatives other than the approach set forth in this proposed rule reflecting the CY 2005 proposed annual update to the HH PPS rates. Other than the positive effect of the market basket increase, this proposed rule would not have a significant economic impact nor would it impose an additional burden on small entities. When a regulation or notice imposes additional burden on small entities, we are required under the RFA to examine alternatives for reducing burden.

As discussed in the ''Rebasing and Revising the Home Health Market Basket'' section of this proposed rule, we believe that it is desirable to rebase the home health market basket periodically. Consequently, as part of this proposed rule, we are proposing to rebase and revise the home health market basket by moving the base year from FY 1993 to FY 2000 to reflect the latest available, thorough data on the structure of HHA costs. CMS periodically rebases and revises market baskets for multiple types of health care providers, generally on a 5-year cycle. We continue to believe that by rebasing and revising the home health market basket periodically, cost category weights will better reflect changes in the mix of goods and services that HHAs purchase in furnishing home health

care. The alternative to not rebase and revise the market basket would be to delay the inevitable task of rebasing and revising the home health market basket to some later date. For this proposed rule, the forecasted rate of growth for CY 2005 for both the proposed rebased and revised home health market basket and the current 1993-based home health market basket is 3.3 percent (see Table 7 of this proposed rule). However, it should be noted that while for this proposed rule the home health market basket percentage is the same for both the 1993-based and the proposed 2000-based rate of growth, that future updates will be better served by using a more up-to-date cost structure, as proposed in the revised and rebased home health market basket.

Section 1895(b)(5) of the Act states that the total amount of payments for outliers, under HH PPS, may not exceed 5 percent of the total payments projected or estimated to be made for a given fiscal year or years. As discussed in the ''Proposed Update to the Outlier Fixed Dollar Loss Ratio'' section of this proposed rule, we are proposing to reduce the fixed dollar loss ratio used in the formula to determine outlier cases in HH PPS, from that of 1.13 to 0.72. Analysis indicates that a fixed dollar loss ratio of 0.72 is consistent with the existing loss-sharing ratio of 0.80 and our target percentage of estimated outlier payments of 5 percent of total home health payments. Other alternatives considered in the updating of the formula for determining outlier cases included updating/changing the loss-sharing ratio from that of 0.80 as well as changing the outlier payment target of to less than 5 percent of total home health payments. We believe that a value of 0.80 for the loss-sharing ratio is appropriate in that it preserves incentives for agencies to provide care efficiently for outlier cases. Similarly, we continue to believe that the total outlier payment target of 5 percent of total home health payments appropriately targets the most costly cases under HH PPS.

D. Conclusion

We have examined the economic impact of this proposed rule on small entities and have determined that the economic impact is positive, significant, and that all HHAs would be affected. To the extent that small rural hospitals are affiliated with HHAs, the impact on these facilities would also be positive. Finally, we have determined that the economic effects described above are largely the result of the specific statutory provisions, which this proposed rule serves to announce.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is proposed to be amended as set forth below:

PART 484—HOME HEALTH SERVICES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

2. Section 484.225 is amended as follows:

A. Paragraph (d) is redesignated as paragraph (g) and is revised.

B. New paragraph (d) is added.

C. New paragraph (e) is added.

D. New paragraph (f) is added.

The revisions and additions read as follows: *§ 484.225 Annual update of the unadjusted national prospective 60-day episode payment rate.*

* * * * *

(d) For the last calendar quarter of 2003 and the first calendar quarter of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket index amount.

(e) For the last 3 calendar quarters of 2004, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous fiscal year (FY 2003) increased by the applicable home health market basket minus 0.8 percentage point.

(f) For each calendar year of 2005 and 2006, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous calendar year, increased by the applicable home health market basket minus 0.8 percentage point.

(g) For 2007 and subsequent calendar years, the unadjusted national rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 23, 2004.

Tommy G. Thompson,

Secretary.

Note: The following addenda will not be published in the Code of Federal Regulations.

ADDENDUM A.—PROPOSED WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

[CY 2005]

MSA name	Wage index
ALABAMA	0.7492
ALASKA	1.1886
ARIZONA	0.9270
ARKANSAS	0.7734
CALIFORNIA	0.9967
COLORADO	0.9328
CONNECTICUT	1.2183
DELAWARE	0.9557
FLORIDA	0.8855
GEORGIA	0.8369
GUAM	0.9611
HAWAII	0.9958
IDAHO	0.8974
ILLINOIS	0.8254
INDIANA	0.8824
IOWA	0.8416
KANSAS	0.8074
KENTUCKY	0.7973
LOUISIANA	0.7451
MAINE	0.8812
MARYLAND	0.9125
MASSACHUSETTS	1.0432
MICHIGAN	0.8877
MINNESOTA	0.9330
MISSISSIPPI	0.7778
MISSOURI	0.8056
MONTANA	0.8800
NEBRASKA	0.8822
NEVADA	0.9806
NEW HAMPSHIRE	1.0030
NEW JERSEY [1]	
NEW MEXICO	0.8270
NEW YORK	0.8526
NORTH CAROLINA	0.8456
NORTH DAKOTA	0.7778
OHIO	0.8820
OKLAHOMA	0.7537
OREGON	0.9994
PENNSYLVANIA	0.8378
PUERTO RICO	0.4018
RHODE ISLAND [1]	
SOUTH CAROLINA	0.8498
SOUTH DAKOTA	0.8195
TENNESSEE	0.7886
TEXAS	0.7780
UTAH	0.8974
VERMONT	0.9307
VIRGINIA	0.8498
VIRGIN ISLANDS	0.7195
WASHINGTON	1.0388
WEST VIRGINIA	0.8018
WISCONSIN	0.9304

ADDENDUM A.—PROPOSED WAGE INDEX FOR RURAL AREAS—APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

[CY 2005]

MSA name	Wage index
WYOMING	0.9110

[1] All counties within State are classified as Urban.

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

MSA	Urban area (constituent counties)	Wage index
0040	Abilene, TX	0.7627
	Taylor, TX	
0060	Aguadilla, PR	0.4306
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	0.9246
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0863
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.8489
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.9300
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.8019
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	0.9721
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.8806
	Blair, PA	
0320	Amarillo, TX, Potter, TX	0.8986
	Randall, TX	
0380	Anchorage, AK	1.2216
	Anchorage, AK	
0440	Ann Arbor, MI	1.1074
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8090
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.9035
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4155
	Arecibo, PR	
	Camuy, PR	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Hatillo, PR	
0480	Asheville, NC	0.9720
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	0.9818
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0130
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ	1.0795
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelka, AL	0.8494
	Lee, AL	
0600	Augusta-Aiken, GA–SC	0.9625
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9609
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9810
	Kern, CA	
0720	Baltimore, MD	0.9919
	Anne Arundel, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Annes, MD	
0733	Bangor, ME	0.9904
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.2956
	Barnstable, MA	
0760	Baton Rouge, LA	0.8406
	Ascension, LA	
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.8424
	Hardin, TX	
	Jefferson, TX	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Orange, TX	
0860	Bellingham, WA	1.1757
	Whatcom, WA	
0870	Benton Harbor, MI	0.8935
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.1692
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.8961
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.9029
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8428
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL.	0.9212
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7965
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8662
	Monroe, IN	
1040	Bloomington-Normal, IL	0.8832
	McLean, IL	
1080	Boise City, ID	0.9209
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1233
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	1.0049
	Boulder, CO	
1145	Brazoria, TX	0.8137
	Brazoria, TX	
1150	Bremerton, WA	1.0580
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX.	1.0303
	Cameron, TX.	
1260	Bryan-College Station, TX	0.9019
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	0.9604
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	0.9704
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4158
	Caguas, PR	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320 ..	Canton-Massillon, OH	0.9071
	Carroll, OH	
	Stark, OH	
1350 ..	Casper, WY	0.9095
	Natrona, WY	
1360 ..	Cedar Rapids, IA	0.8874
	Linn, IA	
1400 ..	Champaign-Urbana, IL	0.9907
	Champaign, IL	
1440 ..	Charleston-North Charleston, SC.	0.9332
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480 ..	Charleston, WV	0.8880
	Kanawha, WV	
	Putnam, WV	
1520 ..	Charlotte-Gastonia-Rock Hill, NC–SC.	0.9730
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanley, NC	
	Union, NC	
	York, SC	
1540 ..	Charlottesville, VA	1.0025
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560 ..	Chattanooga, TN–GA	0.9086
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580 ..	Cheyenne, WY	0.8796
	Laramie, WY	
1600 ..	Chicago, IL	1.0892
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620 ..	Chico-Paradise, CA	1.0193
	Butte, CA	
1640 ..	Cincinnati, OH–KY–IN	0.9413
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Hamilton, OH	
	Warren, OH	
1660 ..	Clarksville-Hopkinsville, TN–KY.	0.8244
	Christian, KY	
	Montgomery, TN	
1680 ..	Cleveland-Lorain-Elyria, OH.	0.9671
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720 ..	Colorado Springs, CO	0.9833
	El Paso, CO	
1740 ..	Columbia, MO	0.8695
	Boone, MO	
1760 ..	Columbia, SC	0.8902
	Lexington, SC	
	Richland, SC	
1800 ..	Columbus, GA–AL	0.8694
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840 ..	Columbus, OH	0.9648
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880 ..	Corpus Christi, TX	0.8521
	Nueces, TX	
	San Patricio, TX	
1890 ..	Corvallis, OR	1.1516
	Benton, OR	
1900 ..	Cumberland, MD–WV	0.8200
	Allegany, MD	
	Mineral, WV	
1920 ..	Dallas, TX	0.9974
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950 ..	Danville, VA	0.9035
	Danville City, VA	
	Pittsylvania, VA	
1960 ..	Davenport-Moline-Rock Island, IA–IL	0.8985
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000 ..	Dayton-Springfield, OH ...	0.9518
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020 ..	Daytona Beach, FL	0.9060
	Flagler, FL	
	Volusia, FL	
2030 ..	Dacatur, AL	0.8828

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Lawrence, AL	
	Morgan, AL	
2040 ..	Dacatur, IL	0.8161
	Macon, IL	
2080 ..	Denver, CO	1.0837
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120 ..	Des Moines, IA	0.9106
	Dallas, IA	.....
	Polk, IA	
	Warren, IA	
2160 ..	Detroit, MI	1.0101
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180 ..	Dothan, AL	0.7741
	Dale, AL	
	Houston, AL	
2190 ..	Dover, DE	0.9805
	Kent, DE	
2200 ..	Dubuque, IA	0.8886
	Dubuque, IA	
2240 ..	Duluth-Superior, MN–WI	1.0171
	St. Louis, MN	
	Douglas, WI	
2281 ..	Dutchess County, NY	1.0934
	Dutchess, NY	
2290 ..	Eau Claire, WI	0.9064
	Chippewa, WI	
	Eau Claire, WI	
2320 ..	El Paso, TX	0.9196
	El Paso, TX	
2330 ..	Elkhart-Goshen, IN	0.9783
	Elkhart, IN	
2335 ..	Elmira, NY	0.8377
	Chemung, NY	
2340 ..	Enid, OK	0.8559
	Garfield, OK	
2360 ..	Erie, PA	0.8601
	Erie, PA	
2400 ..	Eugene-Springfield, OR ..	1.1456
	Lane, OR	
2440 ..	Evansville-Henderson, IN-KY.	0.8429
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520 ..	Fargo-Moorhead, ND-MN	0.9797
	Clay, MN	
	Cass, ND	
2560 ..	Fayetteville, NC	0.8986
	Cumberland, NC	
2580 ..	Fayetteville-Springdale-Rogers, AR.	0.8396
	Benton, AR	
	Washington, AR	
2620 ..	Flagstaff, AZ-UT	1.1333
	Coconino, AZ	
	Kane, UT	
2640 ..	Flint, MI	1.0858

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Genesee, MI	
2650 ..	Florence, AL	0.7747
	Colbert, AL	
	Lauderdale, AL	
2655 ..	Florence, SC	0.8709
	Florence, SC	
2670 ..	Fort Collins-Loveland, CO	1.0108
	Larimer, CO	
2680 ..	Ft. Lauderdale, FL	1.0163
	Broward, FL	
2700 ..	Fort Myers-Cape Coral, FL.	0.9816
	Lee, FL	
2710 ..	Fort Pierce-Port St. Lucie, FL.	1.0008
	Martin, FL	
	St. Lucie, FL	
2720 ..	Fort Smith, AR-OK	0.8424
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750 ..	Fort Walton Beach, FL	0.8966
	Okaloosa, FL	
2760 ..	Fort Wayne, IN	0.9585
	Adams, IN	
	Allen, IN	
	De Kalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800 ..	Forth Worth-Arlington, TX	0.9359
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840 ..	Fresno, CA	1.0142
	Fresno, CA	
	Madera, CA	
2880 ..	Gadsden, AL	0.8206
	Etowah, AL	
2900 ..	Gainesville, FL	0.9693
	Alachua, FL	
2920 ..	Galveston-Texas City, TX	0.9279
	Galveston, TX	
2960 ..	Gary, IN	0.9410
	Lake, IN	
	Porter, IN	
2975 ..	Glens Falls, NY	0.8475
	Warren, NY	
	Washington, NY	
2980 ..	Goldsboro, NC	0.8622
	Wayne, NC	
2985 ..	Grand Forks, ND–MN	0.8636
	Polk, MN	
	Grand Forks, ND	
2995 ..	Grand Junction, CO	0.9633
	Mesa, CO	
3000 ..	Grand Rapids-Muskegon-Holland, MI.	0.9469
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040 ..	Great Falls, MT	0.8809
	Cascade, MT	
3060 ..	Greeley, CO	0.9372
	Weld, CO	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
3080 ..	Green Bay, WI	0.9461
	Brown, WI	
3120 ..	Greensboro-Winston-Salem-High Point, NC.	0.9166
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadin, NC	
3150 ..	Greenville, NC	0.9098
	Pitt, NC	
3160 ..	Greenville, Spartanburg-Anderson, SC.	0.9335
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180 ..	Hagerstown, MD	0.9172
	Washington, MD	
3200 ..	Hamilton-Middletown, OH	0.9214
	Butler, OH	
3240 ..	Harrisburg-Lebanon-Carlisle, PA.	0.9164
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283 ..	Hartford, CT	1.1555
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285 ..	Hattiesburg, MS	0.7307
	Forrest, MS	
	Lamar, MS	
3290 ..	Hickory-Morganton-Lenoir, NC.	0.9242
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawaba, NC	
3320 ..	Honolulu, HI	1.1098
	Honolulu, HI	
3350 ..	Houma, LA	0.7771
	Lafourche, LA	
	Terrebonne, LA	
3360 ..	Houston, TX	0.9834
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400 ..	Huntington-Ashland, WV–KY–OH.	0.9595
	Boyd, KY	
	Carter, KY	
	Grenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440 ..	Huntsville, AL	0.9245
	Limestone, AL	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Madison, AL	
3480 ..	Indianapolis, IN	0.9916
	Boone, IN	
	Hamilton, IN	
	Hancoock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500 ..	Iowa City, IA	0.9548
	Johnson, IA	
3520 ..	Jackson, MI	0.8986
	Jackson, MI	
3560 ..	Jackson, MS	0.8357
	Hinds, MS	
	Madison, MS	
	Rankin MS	
3580 ..	Jackson, TN	0.8984
	Madison, TN	
	Chester, TN	
3600 ..	Jacksonville, FL	10.9529
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605 ..	Jacksonville, NC	0.8544
	Onslow, NC	
3610 ..	Jamestown, NY	0.7762
	Chautauqua, NY	
3620 ..	Janesville-Beloit, WI	0.9282
	Rock, WI	
3640 ..	Jersey City, NJ	1.1115
	Hudson, NJ	
3660 ..	Johnson City-Kingsport-Bristol, TN–VA.	0.8253
	Carter, TN.	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680 ..	Johnstown, PA	0.8158
	Cambria, PA	
	Somerset, PA	
3700 ..	Jonesboro, AR	0.7794
	Craighead, AR	
3710 ..	Joplin, MO	0.8681
	Jasper, MO	
	Newton, MO	
3720 ..	Kalamazoo-Battlecreek, MI	1.0500
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740 ..	Kankakee, IL	1.0419
	Kankakee, IL	
3760 ..	Kansas City, KS–MO	0.9715
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800 ..	Kenosha, WI	0.9761
	Kenosha, WI	
3810 ..	Killeen-Temple, TX	0.9159
	Bell, TX	
	Coryell, TX	
3840 ..	Knoxville, TN	0.8820
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850 ..	Kokomo, IN	0.9045
	Howard, IN	
	Tipton, IN	
3870 ..	La Crosse, WI–MN	0.9247
	Houston, MN	
	La Crosse, WI	
3880 ..	Lafayette, LA	0.8207
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920 ..	Lafayette, IN	0.9036
	Clinton, IN	
	Tippecanoe, IN	
3960 ..	Lake Charles, LA	0.7841
	Calcasieu, LA	
3980 ..	Lakeland-Winter Haven, FL.	0.8811
	Polk, FL	
4000 ..	Lancaster, PA	0.9282
	Lancaster, PA	
4040 ..	Lansing-East Lansing, MI	0.9714
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080 ..	Laredo, TX	0.8091
	Webb, TX	
4100 ..	Las Cruces, NM	0.8688
	Dona Ana, NM	
4120 ..	Las Vegas, NV–AZ	1.1528
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150 ..	Lawrence, KS	0.8074
	Douglas, KS	
4200 ..	Lawton, OK	0.8267
	Comanche, OK	
4243 ..	Lewiston-Auburn, ME	0.9383
	Androscoggin, ME	
4280 ..	Lexington, KY	0.8685
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320 ..	Lima, OH	0.9522
	Allen, OH	
	Auglaize, OH	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
4360 ..	Lincoln, NE	1.0033
	Lancaster, NE	
4400 ..	Little Rock-North Little Rock, AR.	0.8923
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420 ..	Longview-Marshall, TX	0.9113
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480 ..	Los Angeles-Long Beach, CA.	1.1795
	Los Angeles, CA	
4520 ..	Louisville, KY–IN	0.9242
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600 ..	Lubbock, TX	0.8272
	Lubbock, TX	
4640 ..	Lynchburg, VA	0.9134
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680 ..	Macon, GA	0.8953
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720 ..	Madison, WI	1.0264
	Dane, WI	
4800 ..	Mansfield, OH	0.9180
	Crawford, OH	
	Richland, OH	
4840 ..	Mayaguez, PR	0.4795
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880 ..	McAllen-Edinburg-Mission, TX.	0.8381
	Hidalgo, TX	
4890 ..	Medford-Ashland, OR	1.0772
	Jackson, OR	
4900 ..	Melbourne-Titusville-Palm Bay, FL.	0.9776
	Brevard, FL	
4920 ..	Memphis, TN–AR–MS	0.9009
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940 ..	Merced, CA	0.9692
	Merced, CA	
5000 ..	Miami, FL	0.9894
	Dade, FL	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
5015 ..	Middlesex-Somerset-Hunterdon, NJ.	1.1366
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080 ..	Milwaukee-Waukesha, WI	0.9988
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120 ..	Minneapolis-St. Paul, MN–WI.	1.1001
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140 ..	Missoula, MT	0.8718
	Missoula, MT	
5160 ..	Mobile, AL	0.7994
	Baldwin, AL	
	Mobile, AL	
5170 ..	Modesto, CA	1.1275
	Stanislaus, CA	
5190 ..	Monmouth-Ocean, NJ	1.0956
	Monmouth, NJ	
	Ocean, NJ	
5200 ..	Monroe, LA	0.7922
	Ouachita, LA	
5240 ..	Montgomery, AL.	0.7907
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280 ..	Muncie, IN	0.8775
	Delaware, IN	
5330 ..	Myrtle Beach, SC	0.9112
	Horry, SC	
5345 ..	Naples, FL	0.9790
	Collier, FL	
5360 ..	Nashville, TN	0.9855
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380 ..	Nassau-Suffolk, NY	1.3140
	Nassau, NY	
	Suffolk, NY	
5483 ..	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2385
	Fairfield, CT	
	New Haven, CT	
5523 ..	New London-Norwich, CT....	1.1631
	New London, CT	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
5560 ..	New Orleans, LA	0.9174
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600 ..	New York, NY	1.4018
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640 ..	Newark, NJ	1.1518
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660 ..	Newburgh, NY—PA	1.1509
	Orange, NY	
	Pike, PA	
5720 ..	Norfolk-Virginia Beach-Newport News, VA-NC.	0.8619
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775 ..	Oakland, CA	1.4921
	Alameda, CA	
	Contra Costa, CA	
5790 ..	Ocala, FL	0.9728
	Marion, FL	
5800 ..	Odessa-Midland, TX	0.9327
	Ector, TX	
	Midland, TX	
5880 ..	Oklahoma City, OK	0.8984
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910 ..	Olympia, WA	1.0963
	Thurston, WA	
5920 ..	Omaha, NE–IA	0.9745
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
5945 ..	Orange County, CA	1.1372
	Orange, CA	
5960 ..	Orlando, FL	0.9654
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990 ..	Owensboro, KY	0.8374
	Daviess, KY	
6015 ..	Panama City, FL	0.8202
	Bay, FL	
6020 ..	Parkersburg-Marietta, WV–OH.	0.8039
	Washington, OH	
	Wood, WV	
6080 ..	Pensacola, FL	0.8753
	Escambia, FL	
	Santa Rosa, FL	
6120 ..	Peoria-Pekin, IL	0.8734
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160 ..	Philadelphia, PA–NJ	1.0883
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Mongtomery, PA	
	Philadelphia, PA	
6200 ..	Phoenix-Mesa, AZ	1.0129
	Maricopa, AZ	
	Pinal, AZ	
6240 ..	Pine Bluff, AR	0.7865
	Jefferson, AR	
6280 ..	Pittsburgh, PA	0.8901
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323 ..	Pittsfield, MA	1.0276
	Berkshire, MA	
6340 ..	Pocatello, ID	0.9042
	Bannock, ID	
6360 ..	Ponce, PR	0.4708
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403 ..	Portland, ME	0.9949
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440 ..	Portland-Vancouver, OR–WA.	1.1213
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
6483 ..	Providence-Warwick-Pawtucket, RI.	1.0977
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520 ..	Provo-Orem, UT	0.9976
	Utah, UT	
6560 ..	Pueblo, CO	0.8778
	Pueblo, CO	
6580 ..	Punta Gorda, FL	0.9510
	Charlotte, FL	
6600 ..	Racine, WI	0.8814
	Racine, WI	
6640 ..	Raleigh-Durham-Chapel Hill, NC.	0.9959
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660 ..	Rapid City, SD	0.8806
	Pennington, SD	
6680 ..	Reading, PA	0.9133
	Berks, PA	
6690 ..	Redding, CA	1.1352
	Shasta, CA	
6720 ..	Reno, NV	1.0682
	Washoe, NV	
6740 ..	Richland-Kennewick-Pasco, WA.	1.0609
	Benton, WA	
	Franklin, WA	
6760 ..	Richmond-Petersburg, VA	0.9349
	Charles City County, VA	
	Chesterfield, VA	
	Colonia Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780 ..	Riverside-San Bernardino, CA.	1.1348
	Riverside, CA	
	San Bernardino, CA	
6800 ..	Roanoke, VA	0.8700
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820 ..	Rochester, MN	1.1739
	Olmsted, MN	
6840 ..	Rochester, NY	0.9430
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
6880 ..	Rockford, IL	0.9666
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895 ..	Rocky Mount, NC	0.9076
	Edgecombe, NC	
	Nash, NC	
6920 ..	Sacramento, CA	1.1845
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960 ..	Saginaw-Bay City-Midland, MI.	1.0032
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980 ..	St. Cloud, MN	0.9506
	Benton, MN	
	Stearns, MN	
7000 ..	St. Joseph, MO	0.8056
	Andrew, MO	
	Buchanan, MO	
7040 ..	St. Louis, MO–IL	0.9033
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080 ..	Salem, OR	1.0482
	Marion, OR	
	Polk, OR	
7120 ..	Salinas, CA	1.4339
	Monterey, CA	
7160 ..	Salt Lake City-Ogden, UT	0.9913
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200 ..	San Angelo, TX	0.8535
	Tom Green, TX	
7240 ..	San Antonio, TX	0.8870
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320 ..	San Diego, CA	1.1147
	San Diego, CA	
7360 ..	San Francisco, CA	1.4514
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400 ..	San Jose, CA	1.4626
	Santa Clara, CA	
7440 ..	San Juan-Bayamon, PR	0.4909
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460 ..	San Luis Obispo-Atascadero-Paso.	1.1429
	Robles, CA	
	San Luis Obispo, CA	
7480 ..	Santa Barbara-Santa Maria-Lompoc, CA	1.0441
	Santa Barbara, CA	
7485 ..	Santa Cruz-Watsonville, CA	1.2942
	Santa Cruz, CA	
7490 ..	Santa Fe, NM	1.0653
	Los Alamos, NM	
	Santa Fe, NM	
7500 ..	Santa Rosa, CA	1.2877
	Sonoma, CA	
7510 ..	Sarasota-Bradenton, FL	0.9964
	Manatee, FL	
	Sarasota, FL	
7520 ..	Savannah, GA	0.9472
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560 ..	Scranton-Wilkes-Barre-Hazleton, PA	0.8412
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600 ..	Seattle-Bellevue-Everett, WA	1.1562
	Island, WA	
	King, WA	
	Snohomish, WA	
7610 ..	Sharon, PA	0.7751
	Mercer, PA	
7620 ..	Sheboygan, WI	0.8624
	Sheboygan, WI	
7640 ..	Sherman-Denison, TX	0.9700
	Grayson, TX	
7680 ..	Shreveport-Bossier City, LA	0.9083
	Bossier, LA	
	Caddo, LA	
	Webster, LA	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
7720 ..	Sioux City, IA–NE	0.8993
	Woodbury, IA	
	Dakota, NE	
7760 ..	Sioux Falls, SD	0.9309
	Lincoln, SD	
	Minnehaha, SD	
7800 ..	South Bend, IN	0.9821
	St. Joseph, IN	
7840 ..	Spokane, WA	1.0901
	Spokane, WA	
7880 ..	Springfield, IL	0.8944
	Menard, IL	
	Sangamon, IL	
7920 ..	Springfield, MO	0.8457
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003 ..	Springfield, MA	1.0543
	Hampden, MA	
	Hampshire, MA	
8050 ..	State College, PA	0.8740
	Centre, PA	
8080 ..	Steubenville-Weirton, OH–WV	0.8398
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120 ..	Stockton-Lodi, CA	1.0404
	San Joaquin, CA	
8140 ..	Sumter, SC	0.8243
	Sumter, SC	
8160 ..	Syracuse, NY	0.9412
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200 ..	Tacoma, WA	1.1116
	Pierce, WA	
8240 ..	Tallahassee, FL	0.8520
	Gadsden, FL	
	Leon, FL	
8280 ..	Tampa-St. Petersburg-Clearwater, FL.	0.9103
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320 ..	Terre Haute, IN	0.8325
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360 ..	Texarkana, AR-Texarkana, TX.	0.8150
	Miller, AR	
	Bowie, TX	
8400 ..	Toledo, OH	0.9381
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440 ..	Topeka, KS	0.9108
	Shawnee, KS	
8480 ..	Trenton, NJ	1.0517
	Mercer, NJ	
8520 ..	Tucson, AZ	0.8981
	Pima, AZ	
8560 ..	Tulsa, OK	0.9185
	Creek, OK	

ADDENDUM B.—PROPOSED CY 2005 WAGE INDEX FOR URBAN AREAS—PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

MSA	Urban area (constituent counties)	Wage index
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600 ..	Tuscaloosa, AL	0.8212
	Tuscaloosa, AL	
8640 ..	Tyler, TX	0.9404
	Smith, TX	
8680 ..	Utica-Rome, NY	0.8403
	Herkimer, NY	
	Oneida, NY	
8720 ..	Vallejo-Fairfield-Napa, CA	1.3377
	Napa, CA	
	Solano, CA	
8735 ..	Ventura, CA	1.1064
	Ventura, CA	
8750 ..	Victoria, TX	0.8184
	Victoria, TX	
8760 ..	Vineland-Millville-Bridgeton, NJ.	1.0405
	Cumberland, NJ	
8780 ..	Visalia-Tulare-Porterville, CA.	0.9856
	Tulare, CA	
8800 ..	Waco, TX	0.8394
	McLennan, TX	
8840 ..	Washington, DC–MD–VA–WV.	1.0904
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920 ..	Waterloo-Cedar Falls, IA	0.8366
	Black Hawk, IA	
8940 ..	Wausau, WI	0.9692
	Marathon, WI	
8960 ..	West Palm Beach-Boca Raton, FL.	0.9798
	Palm Beach, FL	
9000 ..	Wheeling, WV–OH	0.7494
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040 ..	Wichita, KS	0.9238
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080 ..	Wichita Falls, TX	0.8341
	Archer, TX	
	Wichita, TX	
9140 ..	Williamsport, PA	0.8158
	Lycoming, PA	
9160 ..	Wilmington-Newark, DE–MD.	1.0882
	New Castle, DE	
	Cecil, MD	
9200 ..	Wilmington, NC	0.9563
	New Hanover, NC	
	Brunswick, NC	
9260 ..	Yakima, WA	1.0372
	Yakima, WA	
9270 ..	Yolo, CA	0.9204
	Yolo, CA	
9280 ..	York, PA	0.9119
	York, PA	
9320 ..	Youngstown-Warren, OH	0.9214
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340 ..	Yuba City, CA	1.0196
	Sutter, CA	
	Yuba, CA	
9360 ..	Yuma, AZ	0.8895
	Yuma, AZ	

ADDENDUM C.—COMPARISON OF PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR FY 2003 AND PROPOSED CY 2005

Rural area	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
ALABAMA	0.766	0.7492	−2.19
ALASKA	1.2293	1.1886	−3.31
ARIZONA	0.8493	0.9270	9.15
ARKANSAS	0.7666	0.7734	0.89
CALIFORNIA	0.9840	0.9967	1.29
COLORADO	0.9015	0.9328	3.47
CONNECTICUT	1.2394	1.2183	−1.70
DELAWARE	0.9128	0.9557	4.70
FLORIDA	0.8814	0.8855	0.47
GEORGIA	0.8230	0.8369	1.69
GUAM	0.9611	0.9611	
HAWAII	1.0255	0.9958	−2.90
IDAHO	0.8747	0.8974	2.60
ILLINOIS	0.8204	0.8254	0.61
INDIANA	0.8755	0.8824	0.79
IOWA	0.8315	0.8416	1.21
KANSAS	0.7923	0.8074	1.91
KENTUCKY	0.8079	0.7973	−1.31
LOUISIANA	0.7567	0.7451	−1.53
MAINE	0.8874	0.8812	−0.70
MARYLAND	0.8946	0.9125	2.00
MASSACHUSETTS	1.1288	1.0432	−7.58
MICHIGAN	0.9000	0.8877	−1.37
MINNESOTA	0.9151	0.9330	1.96
MISSISSIPPI	0.7680	0.7778	1.28

ADDENDUM C.—COMPARISON OF PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR FY 2003 AND PROPOSED CY 2005—Continued

Rural area	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
MISSOURI	0.8021	0.8056	0.44
MONTANA	0.8481	0.8800	3.76
NEBRASKA	0.8204	0.8822	7.53
NEVADA	0.9577	0.9806	2.39
NEW HAMPSHIRE	0.9796	1.0030	2.39
NEW JERSEY	.....	.....	.....
NEW MEXICO	0.8872	0.8270	−6.79
NEW YORK	0.8542	0.8526	−0.19
NORTH CAROLINA	0.8666	0.8456	−2.42
NORTH DAKOTA	0.7788	0.7778	−0.13
OHIO	0.8613	0.8820	2.40
OKLAHOMA	0.7590	0.7537	−0.70
OREGON	1.0303	0.9994	−3.00
PENNSYLVANIA	0.8462	0.8378	−0.99
PUERTO RICO	0.4356	0.4018	−7.76
RHODE ISLAND	.....	.....	.....
SOUTH CAROLINA	0.8607	0.8498	−1.27
SOUTH DAKOTA	0.7815	0.8195	4.86
TENNESSEE	0.7877	0.7886	0.11
TEXAS	0.7821	0.7780	−0.52
UTAH	0.9312	0.8974	−3.63
VERMONT	0.9345	0.9307	−0.41
VIRGINIA	0.8504	0.8498	−0.07
VIRGIN ISLANDS	0.7845	0.7195	−8.29
WASHINGTON	1.0179	1.0388	2.05
WEST VIRGINIA	0.7975	0.8018	0.54
WISCONSIN	0.9162	0.9304	1.55
WYOMING	0.9007	0.9110	1.14

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
0040	0.7792	0.7627	−2.12
0060	0.4587	0.4306	−6.13
0080	0.9600	0.9246	−3.69
0120	1.0594	1.0863	2.54
0160	0.8384	0.8489	1.25
0200	0.9315	0.9300	−0.16
0220	0.7859	0.8019	2.04
0240	0.9735	0.9721	−0.14
0280	0.9225	0.8806	−4.54
0320	0.9034	0.8986	−0.53
0380	1.2358	1.2216	−1.15
0440	1.1103	1.1074	−0.26
0450	0.8044	0.8090	0.57
0460	0.8997	0.9035	0.42
0470	0.4337	0.4155	−4.20
0480	0.9876	0.9720	−1.58
0500	1.0211	0.9818	−3.85
0520	0.9991	1.0130	1.39
0560	1.1017	1.0795	−2.02
0580	0.8325	0.8494	2.03
0600	1.0264	0.9625	−6.23
0640	0.9637	0.9609	−0.29
0680	0.9899	0.9810	−0.90
0720	0.9929	0.9919	−0.10
0733	0.9664	0.9904	2.48
0743	1.3202	1.2956	−1.86
0760	0.8294	0.8406	1.35
0840	0.8324	0.8424	1.20
0860	1.2282	1.1757	−4.27
0870	0.9042	0.8935	−1.18
0875	1.2150	1.1692	−3.77

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
0880	0.9022	0.8961	−0.68
0920	0.8757	0.9029	3.11
0960	0.8341	0.8428	1.04
1000	0.9222	0.9212	−0.11
1010	0.7972	0.7965	−0.09
1020	0.8907	0.8662	−2.75
1040	0.9109	0.8832	−3.04
1080	0.9310	0.9209	−1.08
1123	1.1235	1.1233	−0.02
1125	0.9689	1.0049	3.72
1145	0.8535	0.8137	−4.66
1150	1.0944	1.0580	−3.33
1240	0.8880	1.0303	16.02
1260	0.8821	0.9019	2.24
1280	0.9365	0.9604	2.55
1303	1.0052	0.9704	−3.46
1310	0.4371	0.4158	−4.87
1320	0.8932	0.9071	1.56
1350	0.9690	0.9095	−6.14
1360	0.9056	0.8874	−2.01
1400	1.0635	0.9907	−6.85
1440	0.9235	0.9332	1.05
1480	0.8898	0.8880	−0.20
1520	0.9850	0.9730	−1.22
1540	1.0438	1.0025	−3.96
1560	0.8976	0.9086	1.23
1580	0.8628	0.8796	1.95
1600	1.1044	1.0892	−1.38
1620	0.9745	1.0193	4.60
1640	0.9381	0.9413	0.34
1660	0.8406	0.8244	−1.93
1680	0.9670	0.9671	0.01
1720	0.9916	0.9833	−0.84
1740	0.8496	0.8695	2.34
1760	0.9307	0.8902	−4.35
1800	0.8374	0.8694	3.82
1840	0.9751	0.9648	−1.06
1880	0.8729	0.8521	−2.38
1890	1.1453	1.1516	0.55
1900	0.7847	0.8200	4.50
1920	0.9998	0.9974	−0.24
1950	0.8859	0.9035	1.99
1960	0.8835	0.8985	1.70
2000	0.9282	0.9518	2.54
2020	0.9062	0.9060	−0.02
2030	0.8973	0.8828	−1.62
2040	0.8055	0.8161	1.32
2080	1.0601	1.0837	2.23
2120	0.8791	0.9106	3.58
2160	1.0448	1.0101	−3.32
2180	0.8137	0.7741	−4.87
2190	0.9356	0.9805	4.80
2200	0.8795	0.8886	1.03
2240	1.0368	1.0171	−1.90
2281	1.0684	1.0934	2.34
2290	0.8952	0.9064	1.25
2320	0.9265	0.9196	−0.74
2330	0.9722	0.9783	0.63
2335	0.8416	0.8377	−0.46
2340	0.8376	0.8559	2.18
2360	0.8925	0.8601	−3.63
2400	1.0944	1.1456	4.68
2440	0.8177	0.8429	3.08
2520	0.9684	0.9797	1.17
2560	0.8889	0.8986	1.09
2580	0.8100	0.8396	3.65
2620	1.0682	1.1333	6.09
2640	1.1135	1.0858	−2.49
2650	0.7792	0.7747	−0.58
2655	0.8780	0.8709	−0.81

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
2670	1.0066	1.0108	0.42
2680	1.0297	1.0163	−1.30
2700	0.9680	0.9816	1.40
2710	0.9823	1.0008	1.88
2720	0.7895	0.8424	6.70
2750	0.9693	0.8966	−7.50
2760	0.9457	0.9585	1.35
2800	0.9446	0.9359	−0.92
2840	1.0216	1.0142	−0.72
2880	0.8505	0.8206	−3.52
2900	0.9871	0.9693	−1.80
2920	0.9465	0.9279	−1.97
2960	0.9584	0.9410	−1.82
2975	0.8281	0.8475	2.34
2980	0.8892	0.8622	−3.04
2985	0.8897	0.8636	−2.93
2995	0.9456	0.9633	1.87
3000	0.9525	0.9469	−0.59
3040	0.8950	0.8809	−1.58
3060	0.9237	0.9372	1.46
3080	0.9502	0.9461	−0.43
3120	0.9282	0.9166	−1.25
3150	0.9100	0.9098	−0.02
3160	0.9122	0.9335	2.34
3180	0.9268	0.9172	−1.04
3200	0.9418	0.9214	−2.17
3240	0.9223	0.9164	−0.64
3283	1.1549	1.1555	0.05
3285	0.7659	0.7307	−4.60
3290	0.9028	0.9242	2.37
3320	1.1457	1.1098	−3.13
3350	0.8385	0.7771	−7.32
3360	0.9892	0.9834	−0.59
3400	0.9636	0.9595	−0.43
3440	0.8903	0.9245	3.84
3480	0.9717	0.9916	2.05
3500	0.9587	0.9548	−0.41
3520	0.9532	0.8986	−5.73
3560	0.8607	0.8357	−2.90
3580	0.9275	0.8984	−3.14
3600	0.9381	0.9529	1.58
3605	0.8239	0.8544	3.70
3610	0.7976	0.7762	−2.68
3620	0.9849	0.9282	−5.76
3640	1.1190	1.1115	−0.67
3660	0.8268	0.8253	−0.18
3680	0.8329	0.8158	−2.05
3700	0.7749	0.7794	0.58
3710	0.8613	0.8681	0.79
3720	1.0595	1.0500	−0.90
3740	1.0790	1.0419	−3.44
3760	0.9736	0.9715	−0.22
3800	0.9686	0.9761	0.77
3810	1.0399	0.9159	−11.92
3840	0.8970	0.8820	−1.67
3850	0.8971	0.9045	0.82
3870	0.9400	0.9247	−1.63
3880	0.8475	0.8207	−3.16
3920	0.9278	0.9036	−2.61
3960	0.7965	0.7841	−1.56
3980	0.9357	0.8811	−5.84
4000	0.9078	0.9282	2.25
4040	0.9726	0.9714	−0.12
4080	0.8472	0.8091	−4.50
4100	0.8745	0.8688	−0.65
4120	1.1521	1.1528	0.06
4150	0.7923	0.8074	1.91
4200	0.8315	0.8267	−0.58
4243	0.9179	0.9383	2.22
4280	0.8581	0.8685	1.21

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
4320	0.9483	0.9522	0.41
4360	0.9892	1.0033	1.43
4400	0.9097	0.8923	−1.91
4420	0.8629	0.9113	5.61
4480	1.2001	1.1795	−1.72
4520	0.9276	0.9242	−0.37
4600	0.9646	0.8272	−14.24
4640	0.9219	0.9134	−0.92
4680	0.9204	0.8953	−2.73
4720	1.0467	1.0264	−1.94
4800	0.8900	0.9180	3.15
4840	0.4914	0.4795	−2.42
4880	0.8428	0.8381	−0.56
4890	1.0498	1.0772	2.61
4900	1.0253	0.9776	−4.65
4920	0.8920	0.9009	1.00
4940	0.9837	0.9692	−1.47
5000	0.9802	0.9894	0.94
5015	1.1213	1.1366	1.36
5080	0.9893	0.9988	0.96
5120	1.0903	1.1001	0.90
5140	0.9157	0.8718	−4.79
5160	0.8108	0.7994	−1.41
5170	1.0498	1.1275	7.40
5190	1.0674	1.0956	2.64
5200	0.8137	0.7922	−2.64
5240	0.7734	0.7907	2.24
5280	0.9284	0.8775	−5.48
5330	0.8976	0.9112	1.52
5345	0.9754	0.9790	0.37
5360	0.9578	0.9855	2.89
5380	1.3357	1.3140	−1.62
5483	1.2408	1.2385	−0.19
5523	1.1767	1.1631	−1.16
5560	0.9046	0.9174	1.41
5600	1.4414	1.4018	−2.75
5640	1.1381	1.1518	1.20
5660	1.1387	1.1509	1.07
5720	0.8574	0.8619	0.52
5775	1.5072	1.4921	−1.00
5790	0.9402	0.9728	3.47
5800	0.9397	0.9327	−0.74
5880	0.8900	0.8984	0.94
5910	1.0960	1.0963	0.03
5920	0.9978	0.9745	−2.34
5945	1.1474	1.1372	−0.89
5960	0.9640	0.9654	0.15
5990	0.8344	0.8374	0.36
6015	0.8865	0.8202	−7.48
6020	0.8127	0.8039	−1.08
6080	0.8645	0.8753	1.25
6120	0.8739	0.8734	−0.06
6160	1.0713	1.0883	1.59
6200	0.9820	1.0129	3.15
6240	0.7962	0.7865	−1.22
6280	0.9365	0.8901	−4.95
6323	1.0235	1.0276	0.40
6340	0.9372	0.9042	−3.52
6360	0.5169	0.4708	−8.92
6403	0.9794	0.9949	1.58
6440	1.0667	1.1213	5.12
6483	1.0854	1.0977	1.13
6520	0.9984	0.9976	−0.08
6560	0.8820	0.8778	−0.48
6580	0.9218	0.9510	3.17
6600	0.9334	0.8814	−5.57
6640	0.9990	0.9959	−0.31
6660	0.8846	0.8806	−0.45
6680	0.9295	0.9133	−1.74
6690	1.1135	1.1352	1.95

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
6720	1.0648	1.0682	0.32
6740	1.1491	1.0609	−7.68
6760	0.9477	0.9349	−1.35
6780	1.1365	1.1348	−0.15
6800	0.8614	0.8700	1.00
6820	1.2139	1.1739	−3.30
6840	0.9194	0.9430	2.57
6880	0.9625	0.9666	0.43
6895	0.9228	0.9076	−1.65
6920	1.1500	1.1845	3.00
6960	0.9650	1.0032	3.96
6980	0.9700	0.9506	−2.00
7000	0.8021	0.8056	0.44
7040	0.8855	0.9033	2.01
7080	1.0367	1.0482	1.11
7120	1.4623	1.4339	−1.94
7160	0.9945	0.9913	−0.32
7200	0.8374	0.8535	1.92
7240	0.8753	0.8870	1.34
7320	1.1131	1.1147	0.14
7360	1.4142	1.4514	2.63
7400	1.4145	1.4626	3.40
7440	0.4741	0.4909	3.54
7460	1.1271	1.1429	1.40
7480	1.0481	1.0441	−0.38
7485	1.3646	1.2942	−5.16
7490	1.0712	1.0653	−0.55
7500	1.3046	1.2877	−1.30
7510	0.9425	0.9964	5.72
7520	0.9376	0.9472	1.02
7560	0.8599	0.8412	−2.17
7600	1.1474	1.1562	0.77
7610	0.7869	0.7751	−1.50
7620	0.8697	0.8624	−0.84
7640	0.9255	0.9700	4.81
7680	0.8987	0.9083	1.07
7720	0.9046	0.8993	−0.59
7760	0.9257	0.9309	0.56
7800	0.9802	0.9821	0.19
7840	1.0852	1.0901	0.45
7880	0.8659	0.8944	3.29
7920	0.8424	0.8457	0.39
8003	1.0927	1.0543	−3.51
8050	0.8941	0.8740	−2.25
8080	0.8804	0.8398	−4.61
8120	1.0506	1.0404	−0.97
8140	0.8273	0.8243	−0.36
8160	0.9714	0.9412	−3.11
8200	1.0940	1.1116	1.61
8240	0.8504	0.8520	0.19
8280	0.9065	0.9103	0.42
8320	0.8599	0.8325	−3.19
8360	0.8088	0.8150	0.77
8400	0.9810	0.9381	−4.37
8440	0.9199	0.9108	−0.99
8480	1.0432	1.0517	0.81
8520	0.8911	0.8981	0.79
8560	0.8332	0.9185	10.24
8600	0.8130	0.8212	1.01
8640	0.9521	0.9404	−1.23
8680	0.8465	0.8403	−0.73
8720	1.3354	1.3377	0.17
8735	1.1096	1.1064	−0.29
8750	0.8756	0.8184	−6.53
8760	1.0031	1.0405	3.73
8780	0.9429	0.9856	4.53
8800	0.8073	0.8394	3.98
8840	1.0851	1.0904	0.49
8920	0.8069	0.8366	3.68
8940	0.9782	0.9692	−0.92

Urban MSA	FY 2003 wage index	Proposed CY 2005 wage index	Percent change, FY 2003—proposed CY 2005
8960	0.9939	0.9798	−1.42
9000	0.7670	0.7494	−2.29
9040	0.9520	0.9238	−2.96
9080	0.8498	0.8341	−1.85
9140	0.8544	0.8158	−4.52
9160	1.1173	1.0882	−2.60
9200	0.9640	0.9563	−0.80
9260	1.0569	1.0372	−1.86
9270	0.9434	0.9204	−2.44
9280	0.9026	0.9119	1.03
9320	0.9358	0.9214	−1.54
9340	1.0276	1.0196	−0.78
9360	0.8589	0.8895	3.56

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Part V

Environmental Protection Agency

Agency Policy and Guidance: Small Local Governments Compliance Assistance Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[Docket #OECA–2004–001; FRL–7669–2]

Agency Policy and Guidance: Small Local Governments Compliance Assistance Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today issues the Small Local Governments Compliance Assistance Policy (the Revised Policy), which revises and supercedes EPA's Policy on Flexible State Enforcement Responses to Small Community Violations (the Prior Policy). EPA issues the Revised Policy to clarify who are the intended recipients of state penalty mitigation benefits under the Prior Policy, and to make those benefits available, in defined circumstances, to local governments with larger resident populations and in response to a wider variety of environmental compliance activities. By establishing parameters within which EPA will generally defer to a states decision to reduce or waive the normal noncompliance penalty of a unit of small, general-purpose local government, the Revised Policy provides an incentive for small local governments to seek compliance assistance from their states and take the actions necessary to achieve and sustain comprehensive environmental compliance.

DATES: This Revised Policy becomes effective on June 2, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OECA–2004–001. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Docket materials are available either electronically in EDOCKET or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. In addition to being available in the docket, an electronic copy of the Revised Policy will also be available on the Worldwide Web through the Office of Enforcement and Compliance Assurance Web site at *http://www.epa.gov/compliance/index.html.*

FOR FURTHER INFORMATION CONTACT: Kenneth Harmon, Compliance Assistance and Sector Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2224A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number (202) 564–7049; fax number (202) 564–7083; e-mail address *harmon.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The United States Census Bureau's 2002 Census of Governments indicates that 89 percent of America's 35,933 subcounty units of general-purpose local government have fewer than 10,000 permanent residents. One in five Americans lives in, and receives government services from, one of these small, subcounty general-purpose governments. There are also 671 counties in America that have fewer than 10,000 permanent residents. A unit of local government with a small resident population has a smaller number of taxpayers and rate payers to bear the costs of providing governmental and municipal services. These economies of scale can mean that small local governments are unable to charge their residents the higher per capita rates that would be necessary to deliver the same level of government services that larger local governments can deliver to their residents at a lower per capita cost. With limited financial resources at their disposal, small local governments may have more difficulty than larger local governments attracting and funding the managerial and technical expertise they need to ensure comprehensive compliance with environmental requirements. Small local governments may be reluctant to ask the state for help because a state regulator will normally require the local government to pay a penalty if violations are found. The Revised Policy establishes parameters within which EPA will generally defer to a state's decision to reduce or waive the normal noncompliance penalties for a small local government violator, thereby removing one of a small local government's disincentives to ask for compliance assistance from the state. By encouraging small local governments to assess their compliance with all of the environmental requirements that apply to their governmental operations and to commit to achieving and sustaining comprehensive environment compliance, the Revised Policy potentially reduces health risks for the 56 million Americans who live in small local governments.

II. Background and History

In 1995, EPA's Policy on Flexible State Enforcement Responses to Small Community Violations (the Prior Policy), established parameters within which EPA would generally defer to a state's decision to reduce or waive the normal noncompliance penalties of a small community that worked in good faith to correct its environmental violations and achieve comprehensive environmental compliance. By comprehensive compliance, EPA meant compliance with every environmental requirement to which the small community's governmental operations were subject. If a small community could not achieve comprehensive compliance within 180 days of the state's commencement of compliance assistance to the community, the Prior Policy requires that within that same 180 days the community must enter into a written agreement with the state establishing an enforceable schedule for the community to address and correct all of its environmental violations as soon as practicable. A state seeking EPA's deference to its decision to reduce a small community's noncompliance penalties must have had adequate processes for:

- Responding quickly to requests for compliance assistance;
- Selecting communities to participate in the state's compliance assistance program;
- Assessing a community's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring prompt correction of violations

EPA reserved all of its enforcement authorities, including its discretion to initiate an enforcement action to address any violation or circumstance that may have presented an imminent and substantial endangerment to, had caused or was causing actual serious harm to, or was presenting a serious threat to, public health or the environment. EPA would not defer to a state's decision to reduce or waive the normal noncompliance penalty if, in EPA's judgment, a state's implementation of the Small Communities Policy failed to provide, in a specific case, adequate protection to human health and the environment. EPA would not defer to a state's decision to reduce or waive the normal noncompliance penalty if, in EPA's judgment, a state's implementation of the Small Communities Policy neither required nor resulted in reasonable

progress toward, and achievement of, environmental compliance by a date certain.

In the years since EPA published the Small Communities Policy, few states created programs to implement the policy. Some other states sought to implement the policy, but then found few local governments willing to participate. Contacts with small local government stakeholders and public comments submitted in response to **Federal Register** notices dated January 23, 2002 and October 3, 2004, provided EPA useful suggestions for revisions that could make the policy more useful to states and to small local governments. EPA today incorporates many of those suggestions in the Small Local Governments Compliance Assistance Policy.

III. Major Changes in the Small Local Governments Compliance Assistance Policy

Although the Small Local Governments Compliance Assistance Policy retains and reaffirms much of the Small Communities Policy, the Small Local Governments Compliance Assistance Policy (the Revised Policy) amends the Small Communities Policy (the Prior Policy) in the following important ways: A. The Revised Policy replaces the term ''community'' with the term ''local government'' to describe eligible entities; B. The Revised Policy provides a two-tiered population cap that allows states, in certain circumstances, to reduce or waive the non-compliance penalties of qualifying local governments with up to 10,000 permanent residents; C. States can now reduce or waive the normal noncompliance penalties of small local governments that satisfy the Revised Policy's requirements for developing and implementing an environmental management system for their municipal operations; and D. Although the Prior Policy provided its additional penalty mitigation only for projects that resulted in comprehensive environmental compliance at all of a local government's municipal operations, the Revised Policy permits states, in limited circumstances, to reduce or waive the normal noncompliance penalties of local governments whose projects address comprehensive compliance at a subset of its municipal operations.

Each of these major revisions is discussed in turn.

A. Using the Term ''Local Government'' To Describe Eligible Entities

The Prior Policy applied to ''small communities'', which EPA defined as ''communities, generally comprised of fewer than 2,500 residents, [that are]:

- Non-profit.
- Governing entities (incorporated or unincorporated).
- That own facilities that supply municipal services.

The Revised Policy replaces the ambiguous term ''community'' with the more precise and widely-understood term ''local government''. The Revised Policy further specifies that only organized units of general-purpose local government authorized by a state's constitution and statutes and established to provide general government for a defined area are eligible for a reduction or waiver of the normal noncompliance penalty. This new definition of an eligible entity, intended to focus resources more narrowly, excludes unincorporated communities, units of special-purpose local government, and private entities that provide municipal services under contract.

Please note that states can offer compliance assistance to entities that do not meet the Revised Policy's definition of eligible entity. States can also offer compliance assistance to small local governments in a manner inconsistent with the policy. States cannot, however, expect EPA deference if they reduce or waive the normal noncompliance penalty for entities that ineligible under the Revised Policy or for eligible entities that have not acted within the parameters of the Revised Policy.

1. Why Does the Revised Policy Exclude Unincorporated Communities?

In America, there are 38,967 government-like entities with 10,000 or fewer permanent residents that the states have vested with general authority to govern a defined locality. The states recognize these entities as sufficiently organized to present a legal entity that manages its own governmental affairs in a manner that clearly separates it from the administrative and fiscal control of other governments. EPA sought to focus the benefits of the Revised Policy on these 38,967 small local governments when, in the October 3, 2003 **Federal Register** notice, EPA proposed defining eligible entities as ''any unit of general purpose government authorized in a state's constitution and statutes, and established to provide general government for a defined area.'' Some commenters expressed concern that this definition would bar application of the Revised Policy either to unincorporated communities or to privately owned and operated facilities that provide government services under contract. These commenters noted that there are small unincorporated communities that provide municipal water and sewer services to their residents, and their compliance problems, like those of small local governments, can often be traced to a lack of technical, managerial, or financial capacity. EPA acknowledges there are many different kinds of entities whose lack of capacity can make compliance challenging, but intends the Revised Policy to direct attention and benefits to addressing the special compliance needs of organized legal entities with general governmental character and substantial autonomy in the management of their administrative and fiscal affairs. Small unincorporated communities usually lack most or all of these characteristics of governmental units. EPA and the states have a number of compliance assistance and enforcement programs and policies in place that address the needs of non-governmental entities. Small unincorporated communities concerned about their compliance with drinking water or waste water requirements can take advantage of media-specific technical assistance supported by EPA's Office of Water, and can consider either consolidating with other nearby systems operated by a unit of local government or restructuring their operations to share the services of certified operators with other regulated entities. Unincorporated communities also have the option of disclosing violations to the regulator, promptly correcting those violations, and having their penalties reduced in a manner consistent with other EPA policies, such as the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the Audit Policy) and the Small Business Compliance Policy (the Small Business Policy). Many states have adopted their own self-disclosure policies similar the Audit Policy and the Small Business Policy. Even in states that have not adopted their own self-disclosure policies, if a regulated entity and a state act in a manner consistent with the Audit Policy or the Small Business Policy, EPA would have little reason to initiate a federal enforcement action to seek additional relief.

2. Why Does the Revised Policy Exclude Units of Special-Purpose Local Government?

The United States Census Bureau recognizes the federal government, state governments, and five basic types of local governments. Three of the five recognized types of local government are designated general-purpose governments, and two are designated special-purpose governments. As the

Census Bureau noted in its 2002 Census of Governments, the three types of general-purpose governments; county, municipal, and township governments; are readily recognized, in part because the distinguishing characteristics of these forms of general-purpose local government are well-established and consistently applied. States establish the two recognized forms of special-purpose governments, school district governments and other units of special-purpose government, through enabling legislation. Units of special-purpose governments exist as separate entities with substantial administrative and fiscal independence from general-purpose local governments. Most special-purpose governments are formed expressly to provide a service, or a limited set of services, without increasing the financial burden on general-purpose governments that may have been unable to meet the fiscal requirements associated with providing those services. Of the 48,558 units of special-purpose local government recognized in the 2002 Census of Government, 13,506 are school district governments. Ninety-one percent of the remaining 35,052 unitsf special-purpose government perform a single function, most often a function related to natural resources, such as drainage and flood control, irrigation, and soil and water conservation. Other functions include sewerage, fire protection, housing and community development, and other social needs like hospitals and mosquito abatement. The nine percent of special-purpose governments that provide multiple services usually provide services that are closely related, most commonly a combination of drinking water and sewerage services.

The Revised Policy excludes units of special-purpose government from eligibility for two reasons. First, the Revised Policy is intended to promote comprehensive compliance across a broad range of municipal operations. Special-purpose governments, which engage in a limited range of activities, would be better served by a single-medium approach to compliance assistance designed to meet the limited needs of those particular operations. Second, special-purpose governments are usually established specifically to ensure that the resulting governmental entity has the technical, managerial, and financial capacity to discharge its special responsibilities. Special-purpose governments generate the necessary financial capacity either by pooling the resources of several separate units of general-purpose local government located within the service district, or by designating a service district that includes residents of more than one unit of general-purpose local government within the rate base. To determine a special-purpose government's eligibility to participate on the basis of the populations of the individual contributing local governments would misstate the size of the tax base or rate base that supports the unit of special-purpose government. Doing so also fails to consider that an organization that can meet the needs of the entire population served must necessarily be greater in size and sophistication than a similar organization that provides services only to the population of a single small local government.

3. Why Does the Revised Policy Exclude Private Entities That Provide Municipal Services Under Contract?

Private entities that provide municipal services under contract, even those providing municipal services to small populations, represent themselves as having the technical, managerial, and financial capacity for compliant operation at the time they contract to provide service at an agreed-upon rate. These private entities are responsible for complying with all applicable environmental requirements, and should be held accountable if they do not. Providers of municipal services under contract may be able to obtain penalty relief from the state if they disclose their violations and correct them in accordance with the Audit Policy or the Small Business Policy. Either of those policies may be a better option than the Revised Policy for resolving environmental concerns at a single facility that engages in only one operation. Additionally, it may not be appropriate to offer some of the unique aspects of the Revised Policy (*e.g.*, penalty mitigation for violations discovered by the regulator) to private entities that provide services under contract, and some aspects of the Revised Policy may not be applicable to such entities (*e.g.*, the comprehensive environmental compliance evaluations of several different operations; building technical, managerial, and financial capacity; and developing a schedule for addressing all violations in order of risk-based priority).

B. Proposed Revisions to the Population Cap

As noted above, the Prior Policy applied to communities ''generally comprised of fewer than 2,500 residents.'' The Revised Policy establishes a two-tier population cap that extends eligibility to units of local government with populations larger than 2,500. The Revised Policy also clarifies that population to be counted consists of the permanent residents.

1. Why Two Tiers?

Commenters and stakeholders generally agreed that units of general-purpose local government with 3,300 or fewer permanent residents are unlikely to possess the technical, managerial, or financial capacity to achieve and sustain environmental compliance without assistance from the state. Accordingly, the Revised Policy establishes that level of population as its first-tier population cap. States comprehensive compliance assistance programs may accept as participants units of general-purpose local government with 3,300 or fewer permanent residents without first making a determination that the small local government lacks capacity. If those participating small local governments fulfill their obligations as described in the Revised Policy, states may reduce or waive the small local governments' normal noncompliance penalties.

Because local governments with populations of less than 10,000 often lack the financial capacity to hire professional environmental staff (and local governments with more than 10,000 permanent residents usually do have professional environmental staff), the Revised Policy establishes the level of 10,000 permanent residents as its second-tier population cap. A state comprehensive compliance assistance program can provide the Revised Policy's additional penalty mitigation to a participating unit of general-purpose government with more than 3,300 but no more than 10,000 permanent residents only after the state makes a determination that due to its lack of technical, managerial or financial capacity, the unit of local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance.

Please note that this two-tier population cap establishes outer limits on the size of local governments whose normal noncompliance penalties can be reduced or waived by states. States can establish more stringent criteria for the local governments they accept as participants in their comprehensive environmental compliance assistance programs. States may, for example, choose to admit into their programs only units of general-purpose local government with smaller populations than the Revised Policy would permit, or may elect to examine the technical, managerial, and financial capacity of any candidate local government, not just

those with more than 3,300 permanent residents.

In response to its October 3, 2003 **Federal Register** notice proposing the two-tiered population cap, EPA received a number of comments recommending that the Revised Policy raise the population cap to various higher levels. These commenters correctly asserted that setting the population cap higher would allow more units of local governments to enjoy the Revised Policy's benefits. EPA notes that the Revised Policy is intended to benefit those units of general-purpose local government that most need assistance. Establishing a ceiling of 10,000 permanent residents for participating governments extends the Revised Policy's penalty mitigation benefits to 32,741 units of general-purpose local government—fully 84% of all the units of general-purpose local government in the United States, both county and sub-county. EPA believes a population cap that offers benefits to 84% of America's units of general-purpose local governments is sufficiently expansive.

2. How Will a State Assess a Small Local Government's Capacity?

A state that wishes to reduce or waive the normal noncompliance penalty of a local government with between 3,301 and 10,000 permanent residents must have determined that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance. The Revised Policy recommends that states develop and apply a test of small local government capacity that adopts a number of measures drawn from studies performed by EPA's Boise Environmental Finance Center. In the context of measuring the ability of small local governments to implement the requirements of the Safe Drinking Water Act, the Boise Environmental Finance Center identified a number of factors that influence the technical, managerial, and financial capacity of local governments (see, *http://sspa.boisestate.edu/efc/*). EPA adapted many of these measures for inclusion into the Revised Policy, and recommends that states incorporate these measures as appropriate for their local conditions. A state that provides comprehensive compliance assistance to a small local government with more than 3,300 but no more than 10,000 permanent residents and seeks EPA deference to its decision to reduce or waive the normal noncompliance penalty of that small local government must have a capacity test in place and consistently apply it.

C. Fencelining

The term ''fencelining'' means restricting the scope of comprehensive compliance assistance activities to the boundaries of some subset of the local government's operations or facilities (*i.e.* vehicle fleet maintenance, provision of drinking water, grounds keeping, etc.). While EPA primarily intends the Revised Policy to promote the provision of comprehensive environmental compliance assistance with respect to all of a small local government's operations, the Agency acknowledges that states can lower the cost of providing comprehensive compliance assistance to local governments by providing that assistance with respect to a fencelined subset of the government's operations. For this reason, some commenters believed that the Revised Policy should allow its additional penalty mitigation for fenceline projects. EPA notes that ready approval of fenceline projects could encourage states to reduce costs by engaging in nothing but fenceline projects. Some states might choose to implement the Revised Policy not as a policy to ensure comprehensive compliance with all environmental requirements, but as a single-medium policy to ensure compliance at one type of public utility. EPA notes that ensuring comprehensive compliance at all of a local government's municipal operations demands comparatively fewer resources at a small local government that is likely to offer few services and engage in simpler processes. Accordingly, the Revised Policy, indicates that, with respect to compliance assistance to small local governments that have 3,300 or fewer permanent residents, EPA will generally defer to a state's decision to reduce or waive the normal noncompliance penalty only if the effort produced an enforceable agreement to achieve comprehensive compliance at, or to implement an environmental management system for, all of the small government's municipal operations. Local governments that provide municipal services to larger populations are likely to engage in more complex processes and offer more services than small local governments. In such circumstances, EPA will generally defer to a state's decision to reduce or waive the normal noncompliance penalty for appropriate fenceline projects completed by local governments with between 3,301 and 10,000 permanent residents.

D. Environmental Management Systems

An environmental management system (EMS) is an individualized internal management system designed, documented, and implemented to identify and manage the environmental impacts of an entity's operations. Developing and implementing an EMS is an effective way for a local government to identify the environmental aspects of its operations and manage its environmental responsibilities for continual improvement. The Revised Policy gives states the option of using penalty mitigation as an incentive to encourage small local governments to adopt an EMS. To ensure that the EMS adopted by a small local government is consistent with standards established by EPA, the Revised Policy describes seventeen EMS elements that must be part of the small local government's EMS if EPA is to defer to the penalty mitigation provided by the state.

The Revised Policy provides a small local government penalty mitigation if it either achieves and sustains comprehensive compliance or develops and implements an EMS. EPA expects that a small local government seeking to achieve and sustain comprehensive compliance will rely on the state or its representative to perform a comprehensive environmental evaluation of all the local government's operations and to identify all of the environmental concerns that will be addressed in the enforceable agreement the small local government will enter into with the state. The EMS option places more responsibility with the small local government. To take advantage of the EMS option, a small local government must, as expeditiously as practicable and in order of risk-based priority, correct all of the violations discovered by the state during its inspection of a subset of the local government's operations. The small local government must also commit to developing and implementing an EMS. In developing an EMS, the small local government is responsible for ensuring performance of a comprehensive analysis of the environmental aspects of all of its operations (or in the case of a local government approved for a fenceline project, all of its operations within the fenceline). If at any point during the development and implementation of its EMS a small local government discovers additional noncompliance, it must disclose these violations to the state as required by laws and regulations or in accordance with EPA's self-disclosure policies. The state and the small local government

may then amend the terms of their agreement under the Revised Policy's EMS option to incorporate a schedule for correction of the newly discovered violations. The state and the small local government may, however, agree to address any noncompliance discovered after the entry of the EMS option agreement in any manner consistent with this Revised Policy and other EPA enforcement policies and guidelines.

EPA first proposed adding an EMS option to the Revised Policy in the October 3 **Federal Register** notice. Commenters on this point acknowledged the value of an EMS, but expressed concern that the cost and complexity of developing and implementing an EMS would prove too burdensome for small local governments. EPA acknowledges that developing and implementing an EMS is a complex undertaking. The Agency will continue to work toward providing small local governments guidance that will simplify and streamline this process. States working with small local governments to develop an EMS should consult the appropriate EPA Regional office to obtain the latest guidance. Another commenter noted that requiring small local governments' EMSs to meet a federal standard introduced a level of complexity that could be avoided if the Revised Policy were to indicate EPA will accept any EMS that has been approved by a state. At this time, however, EPA believes the Revised Policy must provide federal EMS standards to ensure national consistency.

Local governments that wish to develop and implement an EMS should consult the EPA-sponsored Public Entity EMS Resource Center (PEER Center) at *www.peercenter.net*, and the nearest of its affiliated Local Resource Centers. The PEER Center provides case studies of completed local government EMS projects, process information, and guidance to local governments who wish to develop and implement an EMS. EPA will continue to support efforts to facilitate the development of EMS's by small local governments; will work to ensure state programs have access to EPA EMS tools, services, and funding; and will recommend that local governments that participate in state programs implementing the Revised Policy be given priority access to the Local Resource Centers.

IV. Miscellaneous Issues

EPA's October 3, 2003 **Federal Register** notice solicited public comment on alternative strategies for decreasing the resource burdens on states that implement the Revised Policy; as well as public comments on possible incentives to promote greater participation of small local governments in state programs offering them comprehensive environmental compliance assistance. The comments received reflected general agreement with and support for the options EPA discussed in the **Federal Register** notice. EPA will continue to explore these options. Because states can implement the Revised Policy without EPA-defined strategies for state burden reduction and for small government incentives, EPA will not delay publication of the Revised Policy as it collects information and considers alternatives for moving forward. The **Federal Register** notice also sought public comment on whether or not EPA should develop a Federal policy, similar to the Revised Policy, to apply when EPA itself is implementing a regulatory program and itself provides comprehensive environmental compliance assistance directly to small local governments. EPA received no comments from the public on this point and has no current plans to develop a separate Federal policy.

Dated: May 18, 2004.

Michael M. Stahl,

Director, Office of Compliance.

Small Local Governments Compliance Assistance Policy

A. Introduction and Purpose

The Small Local Governments Compliance Assistance Policy promotes comprehensive environmental compliance among small local governments by establishing parameters within which states [1] can reduce or waive the normal noncompliance penalties of small local governments that make use of the state's comprehensive compliance assistance program. Providing conditions and circumstances in which states may reduce or waive normal noncompliance is intended to reassure small local governments that they will not be forced to pay a large penalty if environmental violations are discovered or revealed while they are participating in compliance assistance activities. To be eligible under this policy for reduction or waiver of the normal noncompliance penalty, a small local government must, within specified deadlines, either:

- Identify and correct all of its environmental violations;
- Identify all of its environmental violations and enter into an enforceable commitment to correct all of its environmental violations in a timely fashion; or
- Correct all of its known environmental violations and enter into an enforceable commitment to develop and implement an environmental management system (EMS) to identify the environmental aspects of its operations and ensure continual environmental improvement.

EPA acknowledges that states and small local governments can realize environmental benefits by negotiating, entering into, and implementing enforceable compliance agreements and schedules that require local governments to correct all of their environmental violations expeditiously while allowing the local government to prioritize among competing environmental mandates on the basis of comparative risk.[2] Small local governments can also realize environmental benefits by entering into enforceable agreements to develop and implement an EMS to manage the environmental aspects of their operations. States may provide small local governments an incentive to request compliance assistance by waiving part or all of the normal penalty for a small local government's violations if the criteria of this policy have been met. If a state acts in accordance with this policy and addresses small local government environmental noncompliance with compliance assistance in a way that results in the small local government making reasonable progress toward compliance, EPA generally will not pursue a separate federal civil administrative or judicial action for additional penalties or additional injunctive relief.

This policy does not apply to any criminal conduct by small local governments or their employees.

[1] State means the agency of any state, commonwealth, or territory of the United States that has received EPA's approval to implement environmental laws and regulations. An Indian Tribe can be a state if it has received EPA's approval for treatment as a state. In cases in which a state agrees to apply the policy to a small local government and that state has not been authorized to implement a particular federal program, EPA shall be the state for purposes of that federally implemented program. Regions should consult with OECA's Office of Regulatory Enforcement prior to implementing this policy.

[2] As described below, EPA does not intend that states and small local governments must prepare a formal comparative risk assessment as part of the small local government environmental compliance assistance process. Information available from EPA's National Center for Environmental Assessment, *http://cfpub.epa.gov/ncea/*, will help states and local governments identify which local environmental problems pose the greatest risk to human health, ecosystem health, and quality of life.

B. Who is Eligible for Reduction or Waiver of Normal Noncompliance Penalties Under This Policy?

This policy applies to small local governments that own and operate facilities used to provide municipal services. A local government is defined as an organized unit of general-purpose local government, authorized in a state's constitution and statutes, and established to provide general government to a defined area. A defined area can be a county, municipality, city, town, township, village, or borough. A small local government is a local government that provides municipal services to 3,300 or fewer permanent residents. A local government that supplies municipal services to between 3,301 and 10,000 permanent residents can also qualify for treatment as a small local government if the state determines, in accordance with a capacity test (described below), that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance.

This policy supersedes the previous version of the policy titled the Policy on Flexible State Enforcement Responses to Small Community Violations, which became effective on November 25, 1995. To the extent this policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

C. How Can a Small Local Government Qualify for Penalty Reduction?

This policy seeks to encourage small local governments to achieve sustained comprehensive environmental compliance in one of two ways. A small local government can work with the state to identify all of the local government's environmental noncompliance and then enter into a written and enforceable agreement establishing a schedule to correct all of its violations in order of risk-based priority. Alternatively, a small local government can enter into a written and enforceable agreement establishing a schedule to: 1. Correct, as expeditiously as practicable and in order of risk-based priority, all violations discovered by the state during an inspection of some subset of the local government's operations; and 2. develop and implement an EMS for all of its governmental operations. EPA's deference to such an exercise of a state's enforcement discretion in response to a small local government's violations will be based on an assessment of the adequacy of the process the state establishes and follows in:

- Responding expeditiously to a small local government's request for compliance assistance;
- Determining which local governments with between 3,301 and 10,000 residents qualify for treatment as small local governments;
- Assessing the small local government's good faith and compliance status;
- Establishing priorities for addressing noncompliance; and
- Ensuring either prompt correction of all environmental violations discovered during the state's comprehensive environmental compliance evaluation of all the local government's operations, or prompt correction of all violations discovered during a state inspection of some subset of the local government's operations and prompt development and implementation of an EMS for all of its governmental operations.

A state must document all findings and activities that are necessary to show adherence to the terms of this policy. If the small local government commits to correct its separate violations in order of risk-based priority, the state's records must discuss the rationale for establishing priorities among the violations to be addressed and explain why the compliance agreement and schedule represents the shortest practicable time schedule feasible under the circumstances.

EPA will defer more readily to a state that has previously submitted to the Agency a description of its comprehensive compliance assistance program for small local governments, thereby allowing EPA to familiarize itself with the adequacy of the state's processes.

D. How Should a State Select Participating Local Governments?

EPA intends this policy to apply only to small local governments unable to satisfy all applicable environmental mandates without assistance from the state. For the purposes of this policy, local governments with 3,300 or fewer permanent residents are assumed to need the state's compliance assistance and are deemed eligible to participate at the state's discretion. Local governments whose permanent residents number between 3,301 and 10,000 can qualify to receive the benefits of the policy only if the state determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance. To make this determination, a state must apply a capacity test that measures such indicators as:

- The local government finds it difficult to comply with routine reporting requirements (*e.g.*, in the past year, the local government has submitted less than 90 percent of the monitoring reports required by applicable environmental regulations);
- The local government has no operation and maintenance plan for its utility operations, or has an operation and maintenance plan that is not routinely followed (*e.g.*, maintenance logs are not regularly updated, are incomplete, or are not kept at all);
- The required drinking water sanitary survey has not been scheduled, or the sanitary survey has been performed, but the local government has not addressed all identified significant deficiencies;
- Utility operators are untrained or uncertified, or staffing of certified operators is inadequate to meet the local government's needs;
- Utility systems were installed without state oversight and approval, or began operating without receiving final operational approval from the state;
- Rights essential to the provision of municipal services are not clearly established and documented by contract (*e.g.*, the local government has no contract with the source from which it obtains its drinking water, or for the disposal of its solid waste);
- The local government does not have current and approved by-laws, ordinances, or tariffs in place with respect to each of its public utility operations;
- There is no formal organizational structure for operation and maintenance of the local government's public utilities clearly identifying the owner, the operator, and the staff and their responsibilities;
- Either there are no written job descriptions clearly defining the responsibilities of public utility staff, or the staff is unfamiliar with such documents;
- Staff is untrained or inadequately trained;
- Written policies covering personnel, customer service, and risk management either do not exist or are routinely ignored;
- Lines of communication between public utility staff and agencies or private sector staff that can provide assistance are inadequate or nonexistent;

• The local government does not follow standard accounting principles in the funding of its public utilities, and either has not been audited or was issued an adverse opinion following an audit;

• The local government either does not have an annual budget for operation of a public utility or has an annual budget that is inadequate to meet the demands of operation, maintenance, and environmental compliance;

• Public utility rates do not include all users or have not been recently reviewed to examine operational sustainability and viability;

• A significant percentage of accounts (either payable or receivable) are chronically delinquent;

• Periodic budget reports and balance sheets are either not produced, or, if produced, have not been approved;

• The local government's tax base is inadequate to support needed environmental expenditures; or

• There are demographic factors that present quantifiable negative impacts on the local government's capacity.

The state must document the capacity test it applied and all findings it made to support its determination of incapacity, and maintain that documentation in records accessible for EPA review.

EPA's evaluation of the appropriateness of a state's small local government comprehensive environmental compliance assistance program will depend in part on whether the state uses adequate measures of technical, managerial, and financial capacity to ensure that only those local governments that truly need assistance were assessed noncompliance penalties that were reduced beyond the extent normally allowed by EPA enforcement policies and guidance.

Not less than quarterly, a state should provide EPA with a list of local governments participating in its small local government environmental compliance assistance program to ensure proper state and federal coordination on enforcement activity. In addition to any records related to a finding of a local government's incapacity, a state must keep records of contacts between the state and participating local governments, results of compliance assessments, actions taken by the local government to achieve compliance, any written compliance agreements and schedules, and any assessments of a local government's adherence to the terms of its compliance agreement and schedule should be kept in the state's files accessible for review by EPA.

E. How Should a State Assess a Local Government's Good Faith?

In considering whether a state has established and is following an adequate process for assessing a small local government's good faith, EPA generally will look at such factors as the participating local government's candor in contacts with state regulators and the local government's efforts to comply with applicable environmental requirements. Measures of a small local government's good faith include:

• Prompt self-disclosure of known violations;

• Attempts to comply or a request for compliance assistance prior to the initiation of an enforcement response;

• Willingness to participate in a comprehensive compliance evaluation;

• Prompt correction of known violations;

• Willingness to remediate harm to public health, welfare, or the environment;

• Readiness to enter into a written and enforceable compliance agreement establishing a schedule to correct all of its violations as expeditiously as practicable in order of risk-based priority, or to enter into a written and enforceable agreement establishing a schedule to correct all known violations as expeditiously as practicable in order of risk-based priority and to develop and implement an EMS for all of its governmental operations; and

• Adherence to the terms of the agreement and to the schedule.

F. What is the Scope of Compliance Evaluation and Assistance a State Should Offer?

EPA intends this policy to encourage states to offer local governments comprehensive compliance assistance; that is assistance intended to ensure compliance with all environmental statutes and regulations that apply to the small local government's municipal operations. Accordingly, a state's actions under the policy should promote an evaluation, performed by qualified personnel, of the small local government's compliance status with respect to all applicable environmental requirements. EPA acknowledges that a comprehensive evaluation becomes more difficult to perform and requires more state resources as the size of the local government increases and as the local government offers more services to its residents. For this reason, the policy will allow ''fenceline'' projects at local governments that have between 3,301 and 10,000 permanent residents if the state applies a capacity test consistent with the criteria described in part D of this policy and determines that the technical, managerial, and financial capacity of the local government is so limited that the local government is unlikely to achieve and sustain comprehensive environmental compliance without the state's assistance. A fenceline project is one that limits its scope to those activities conducted within a subset of the local government's operations.

A state's assessment of a local government's compliance status should include:

• A comprehensive evaluation of compliance with every applicable environmental requirement at all of the small local government's municipal operations (*see,* Profile of Local Government Operations, EPA 310–R–001, *http://www.epa.gov/compliance/resources /publications /assistance/sectors/notebooks/government.html;* or the Local Government Environmental Assistance Network, *http://www.lgean.org*) or, in the case of a local government with between 3,301 and 10,000 permanent residents that qualifies for participation after application of the state's capacity test, a comprehensive evaluation of compliance with every environmental requirement that applies within the fenceline of a defined subset of the local government's operations;

• The local government's current and anticipated future noncompliance with those requirements;

• The comparative risk to public health, welfare, or the environment of each current and anticipated future noncompliance; and

• The local government's compliance options.

In addition, EPA recommends that the process developed by the state include consideration of regionalization and restructuring as compliance alternatives. In the case of fenceline projects, the state should consider if compliance benefits can be achieved by consolidating staff and processes of the designated operations with other governmental operations within the local government. The state's process should also include consideration of the impact of promulgated regulations scheduled to become effective in the future.

This policy is also intended to encourage states to provide participating local governments incentives to develop and implement environmental management systems (EMSs). The EMS aspects of this policy are discussed in part I, below.

G. How Should a Small Local Government Set Priorities for Addressing Violations?

States seeking EPA's deference should require small local governments to correct any identified violations of environmental regulations as soon as possible, taking into consideration the local government's technical, managerial, and financial capacities, and the state's ability to assist in strengthening those capacities. A small local government should address all of its violations in order of risk-based priority.[3] While information regarding assessment of environmental risks is available from EPA's National Center for Environmental Assessment at *http://www.epa.gov/ncea/ecologic.htm,* the Agency expects that the comparative risk between violations will, in most instances, be apparent. For example, violations presenting a risk of ingestion or inhalation of, or contact exposure to, acute toxins must be a local government's highest priority for remediation and correction. Any identified violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment is to be addressed immediately in a manner that abates the endangerment or harm and reduces the threat. Activities necessary to abate the endangerment or harm and reduce the threat posed by such violations or circumstances are not to be delayed while the state and small local government establish and implement the process for assigning priorities for correcting other violations.

H. How Can the State Ensure Prompt Correction of Violations?

If the small local government cannot correct all of its violations within 180 days of the state's commencement of compliance assistance to the local government, the state and the local government should, within 180 days of the state's commencement of compliance assistance to the local government, enter into and begin implementing a written and enforceable compliance agreement incorporating a schedule[4] that:

- Establishes a specified period for correcting all outstanding violations in order of risk-based priority;[5]
- Incorporates interim milestones that demonstrate reasonable progress toward compliance;
- Contains provisions to ensure continued compliance with all environmental requirements with which the local government is in compliance at the time the agreement is entered; and
- Incorporates provisions, where they would be applicable to the small local government, to ensure future compliance with any additional already promulgated environmental requirements that will become effective after the agreement is signed.

Consultation with EPA during the drafting of a compliance agreement and schedule and the forwarding of final compliance agreements and schedules to EPA are recommended to ensure appropriate coordination between the state and EPA.

I. What is Required of a Small Local Government That Elects To Address Its Noncompliance by Developing and Implementing an Environmental Management System?

Small local governments that learn of environmental violations as a result of the state's inspection of some subset of the small local government's operations may address their noncompliance by entering into a written and enforceable agreement establishing a schedule to: (1) Correct the violations discovered by the state; and (2) develop and implement an environmental management system for all of its governmental operations. Local governments with between 3,301 and 10,000 permanent residents that the state has determined eligible to participate under the policy on a fenceline basis, may develop and implement an EMS for operations within the designated fenceline. The local government must enter into such an agreement with the state not later than 180 days after the state notifies the local government of the violations discovered during the inspection. The local government must either correct those violations within the same 180 days or include, as part of the EMS agreement it enters into with the state, a written and enforceable agreement that establishes a schedule to correct the violations in accordance with the usual terms of this policy.

As part of its schedule, the EMS agreement will include a deadline, not later than one year after entry into the agreement, for the local government's submission to the state of its EMS manual (*see* element 9, below), and a commitment to ensure the performance of an EMS audit not less than one year and not more than three years after the submission of its EMS manual (*see* element 16, below). The EMS manual must contain policies, procedures, and standards explaining and showing how the small local government's EMS conforms to and will accomplish these essential elements of an EMS:

1. *Environmental policy*—The local government must develop a statement of its commitment to environmental excellence and use this statement as a framework for planning and action.
2. *Environmental aspects*—The local government must identify which of its activities, products, and services have impacts on the environment and what those impacts are.
3. *Legal and other requirements*— The local government must identify the environmental laws and regulations that apply to its operations.
4. *Objectives and targets*—The local government must establish goals for its operations that are consistent with its environmental policy, that will eliminate the gap between the local government's current procedures and an accepted EMS framework, and that will reduce the environmental impacts of its operations.
5. *Environmental management program*—The local government must plan specific actions that will achieve its objectives and targets.
6. *Structure and responsibility*—The local government will establish roles and responsibilities for staff and management to implement the environmental management system, and provide adequate resources.
7. *Training, awareness and competence*—The local government will have a plan to ensure its employees are trained and capable of carrying out their environmental responsibilities.
8. *Communication*—The local government will establish a process for internal and external communications on environmental management issues.
9. *EMS documentation*—The local government will maintain information both on its environmental management system and necessary for its operation. As part of this effort, the local government prepare an EMS manual that contains the policies, procedures, and standards explaining and showing how the local government's EMS

[3] EPA does not intend that local governments should be permitted to delay addressing low-risk violations that can be easily and quickly corrected without impeding progress on long-term compliance efforts undertaken to address high-risk violations.

[4] The agreement entered into by the local government and the state may not unilaterally alter or supersede a local government's obligations under existing federal administrative orders or federal judicial consent decrees.

[5] States may allow weighing of unique local concerns and characteristics, but the process should be sufficiently standardized and objective that an impartial third person using the same process and the same facts would not reach significantly different results. Public notification and public participation are an important part of the priority setting process.

conforms to and will accomplish the essential EMS elements. In accordance with the schedule established by its EMS agreement, and in no event later than one year after entering into the EMS agreement, the local government will submit a copy of its EMS manual to the state as proof that the local government has developed an EMS.

10. *Document control*—The local government will establish a system to ensure effective management of documents related to the EMS and to environmental activities.

11. *Operational control*—The local government will establish a system to identify, plan, and manage its operations consistent with its objectives and targets.

12. *Emergency preparedness and response*—The local government will identify potential emergencies with environmental impacts and develop procedures for preventing them and for responding to them if unprevented.

13. *Monitoring and measurement*—The local government will monitor key EMS activities and track performance. One periodic measure will be an assessment of compliance with legal requirements.

14. *Nonconformance and corrective and preventative action*—The local government will identify and correct deviations from its EMS, and take actions to prevent their recurrence.

15. *Records*—The local government will maintain and manage records of EMS performance.

16. *EMS audit*—Not less than one year, and not more than three years after the local government submits its EMS manual to the state, the state, or an independent third party approved by the state, will conduct an EMS audit to confirm that a local government has been and is continuing to implement its EMS.

17. *Management review*—The local government must provide for periodic review of its EMS by local government management, with the goal of continual improvement of both the system and environmental performance.

A fuller explanation of these 17 essential elements and of the EMS process can be found in Environmental Management Systems: An Implementation Guide for Small and Medium-Sized Organizations (EPA Document Number EPA 832–B–01–001; available electronically at *http://www.epa.gov/owm/iso14001/ems2001final.pdf*). Additional guidance and information regarding how to obtain assistance from a local EMS resource center can be found at *http://www.peercenter.net*.

During the development and implementation of its EMS, the small local government may discover violations that were unknown to it at the time of its entry into the EMS agreement with the state. Such violations must be disclosed to the state as required by regulations or in accordance with EPA self-disclosure policies. The small local government and the state may agree to modify the terms of the terms of the agreement and schedule to incorporate correction of these violations. The small local government and the state may also consider discovery of additional violations a separate event that can be resolved in any manner consistent with the terms of this policy and EPA enforcement policies and guidelines. An assessment of whether or not the local government has corrected all discovered violations as expeditiously as practicable in order of risk-based priority should be part of the EMS audit.

J. What Are the Limits on EPA Deference?

EPA reserves all of its enforcement authorities. EPA will generally defer to a state's exercise of its enforcement discretion in accordance with this policy, except that EPA may require immediate with respect to any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment.[6]

The Small Local Governments Compliance Assistance Policy does not apply if, in EPA's judgment:

- a state's small local government environmental compliance assistance program process fails to satisfy the adequacy criteria stated above; or
- a state's application of its small local government environmental compliance assistance program process fails, in a specific case, to provide adequate protection to public health and the environment because it neither requires nor results in reasonable progress toward either achievement of environmental compliance or implementation of an adequate EMS by a date certain.

Where EPA determines that this policy does not apply, and where EPA elects to exercise its enforcement discretion, other EPA enforcement policies remain applicable. The state's and EPA's options in these circumstances include discretion to take or not take formal enforcement action in light of factual, equitable, or local government capacity considerations with respect to violations that had been identified during compliance assistance and were not corrected. Neither the state's actions in providing, nor in failing to provide, compliance assistance shall constitute a legal defense in any enforcement action. However, a local government's good faith efforts to correct violations during compliance assistance may be considered a mitigating factor in determining the appropriate enforcement response or penalty in subsequent enforcement actions.

Nothing in this policy is intended to release a state from any obligations to supply EPA with required routinely collected and reported information. As described above, states should provide EPA with lists of participating small local governments and copies of final compliance agreements and schedules. States should also give EPA immediate notice upon discovery of a violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents serious threats to, public health, welfare, or the environment.

This policy has no effect on the existing authority of citizens to initiate a legal action against a local government alleging environmental violations.

This policy sets forth factors for consideration that will guide the Agency in its exercise of enforcement discretion. It states the Agency's views as to how the Agency intends to allocate and structure enforcement resources. The policy is not final agency action, and is intended as guidance only. This policy is not intended for use in pleading, or at hearing or trial. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

[6] EPA will regard as a matter of national significance any violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment that is left unaddressed by a small local government participating in a state environmental compliance assistance program. Such circumstances require consultation with or the concurrence of, as appropriate, the Assistant Administrator for Enforcement and Compliance Assurance or his or her delegatee before initiation of an EPA enforcement response.

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To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231

To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

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H.R. 3104/P.L. 108–234

To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

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